J. Harris Perkins
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THE CAPITOL BUILDING AT ALBANY

ACTUAL GOVERNMENT OF NEW YORK

A MANUAL OF THE LOCAL, MUNICIPAL, STATE AND FEDERAL GOVERNMENT FOR USE IN PUBLIC AND PRIVATE SCHOOLS OF NEW YORK STATE

BY

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GINN AND COMPANY
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513.12

The Athenæum Press
GINN AND COMPANY · PROPRIETORS · BOSTON · U.S.A.

TO MY STUDENT FRIENDS

To the young Americans, by birth and by adoption, who cannot carry their studies beyond the grammar and high schools, who love their country and are true to its flag, and who desire to enter upon the duties of life with an intelligent understanding of their responsibilities to nation, state, and locality, this edition is dedicated, with the hope that in a measure it will pay something on the debt which the author feels he owes the boys and girls of our public schools who have worked with him these many years.

THE AUTHOR

ITHACA, NEW YORK

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ACTUAL GOVERNMENT OF NEW YORK

PART I. GOVERNMENT OF THE LOCAL UNITS

CHAPTER I

INTRODUCTION

1. Lest we Forget. The constitution of the United States, "and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land;* and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support" the constitution of the United States (see Appendix, p. lxix). Thus the framers of the federal government made it clear that the government which they were organizing was first in point of authority. New states are admitted to the union by act of congress upon specific terms detailed in the enabling act, which terms, in case of violation by state authorities, would be enforced by the federal courts (see Chapter XXV, p. 341).

2. Government and Business. In order that sewers, streets, public buildings, fire and police departments, etc. may be had and maintained, large sums of money are needed. Municipal government, that is, the government of a village or city, is, in many particulars, very like a department store with its several departments of health, public safety, education, justice, etc., in which we are all stockholders and partners. It is to our interests to see to it that the fire department is well equipped, that the water pressure is sufficient, that its administration is efficient, in order that our property may be protected from destruction by fire. This interest is on the same level as is our interest in our grocer's using a pair of scales which will give us what we pay for. In no sense, however, can this business instinct be construed into meaning allegiance or love of country. We move from one village or city to another or from one locality to another in the same or different states with great frequency. Our relatives live in Ohio, Pennsylvania, and in other states under substantially the same conditions as we live. Leaving one's locality or state is an entirely different thing from leaving one's country. Our love is for our country, not for our state, county, or locality. It is this love of country which makes all state and local government secure and worth while, which leads men to forsake home, business, all personal interests, and offer themselves for their country's good. It was this love of country which defended the pass at Thermopylae, which led to "The charge of the light brigade," and which left five thousand sons of New York dead on the field at Gettysburg. No true American will slander the memory of those whose unselfish acts and deaths have

made government in the smallest unit possible by intimating that it is "essentially a business proposition." In the truest sense there is nothing yellow or jingoish in the sentiment which we sum up in the word "patriotism," the true foundation and motive power of all popular government.

3. Federal Government and the Individual. It is sometimes stated that the federal government is so removed from the individual in his daily round of duties that it is less important than the smaller units of state, county, and local government. Such statements are misleading. Through tariff laws, the federal government may and has placed a tax upon practically every article of food and clothing and shelter, thus daily reaching the most obscure individual in the remotest cottage; it may and has placed a tax upon bank checks, express receipts, telegrams, and the like; it may and has entered any home in any state and forcefully taken the father, son, brother, or husband and put him up as a target to stop the bullets of the country's enemies; it may and has sent troops into a state to enforce federal laws; it may and has passed laws which have opened or closed down industries. It controls the postal system, the foundation of all business; it may declare any street, road, railroad, trolley, or steamship line a post road; its power over interstate commerce gives it practical control over our great railways and water-routes, some of which it owns,[1] and the present tendency is to increase federal power. It coins our money and establishes our weights and measures, thus entering into the

[1] Panama railroad and a steamship line from New York to this railroad are examples.

most minute details of our daily business transactions. Not one of the above powers may be exercised by state, county, or local government. While writing this paragraph, a uniformed officer of the federal government visited my home; he comes daily. There are over thirty of these officials permanently located upon federal property in my city. My state never sends an officer to my home and owns no property in my city. In the study of these lesser "business units" do not forget the far-reaching and fundamental powers of the federal government lest we lend our study to a further development of a kind of bucket-shop statesmanship which looks after the district or the ward before it does after the country or the state.

4. Preliminary Steps. If we were to make a list of the services performed for us by government, we would naturally select those nearest to us, forgetting, perhaps, that the successful performance of those services depends upon the strong central authority represented by federal and state governments. Such a list would probably include our schools and teachers, libraries, roads, bridges, water supply, sewers, firemen, public parks, hospitals, records of our houses and lands, courts for the settlement of disputes and for the punishment of thieves, insurance companies, banks, post office, money, weights and measures, services of the army, navy, regulation of railroads and steamship companies doing business between the states, and many of the larger matters which because of their size do not come directly into our immediate experience, especially when all goes well.

5. Preliminary Steps Classified. If we arrange these services according to the government which immediately

performs them, we would find that the first three are performed by the officers of the school district, who are responsible directly to state officials for the faithful performance of their duties; the next seven by town, village, or city governments, whose officers are in many instances responsible to state officials; the next two would be performed by the county, although the town, village, and city have courts of their own; the next two would be under state control, excepting in the case of national banks; the last seven by the federal government alone, including the management of national banks. Thus it will be seen that government is a series of circles ever widening as we go to the next higher form, with the individual standing at the center, much after the manner of dropping a stone into a pond; yet all laws are made by the people directly or by their chosen representatives and for their (our) benefit.

6. Why we have Government. One reason why we have government is that it is to our advantage; probably this is the chief reason. For example, we wish to send a letter to a friend in another state. We write our letter in the quiet of our home, protected by the local government (town, village, or city). When our letter is completed we seal it in a paper envelope, put a stamp upon it, and place it on our front porch. Government, the mail man, comes along, understands what is wanted, takes the message, guards it in passage, and delivers it to your friend in another state—all for two cents. We could not have done it so cheaply or so well; hence government. But notice; what would have been the result if we had forgotten to perform our part toward the government

and had not placed the stamp on? So it is seen that we have a duty toward government in return for the help which it renders. Or supposing our home was in flames; we might try to put it out ourselves, and probably would try, the firemen would come, attach the fire hose to the hydrant, and quickly extinguish the flames, saving our home and the homes that so thickly surround ours; so we find it safer and better to have water pipes and firemen trained to do our work, while we are attending to other duties. Thus we have figured out that many of the things which all people have done and want done can be done better and cheaper by those hired and trained to do them. Then, too, there are some things which it would be very hard for the individual to do alone and some which he could not do. Therefore, we have courts and policemen to further protect our property and our lives. For all of these services it is the duty of the good citizen to pay and to pay liberally, since many of these services (firemen and policemen) are dangerous, frequently resulting in the death of the officer while guarding our lives or property.

QUESTIONS ON THE TEXT

1. State how the federal government reaches the individual in his daily life.

2. What is the "fundamental law" of the land?

3. Are state and local officials limited in the exercise of their power by federal law? Explain how.

4. Are there government officials located in your town? If so, explain their duties.

5. In what ways are our transactions, whether it be the purchase of articles of food or clothing or a transfer of property, a recognition of the laws set up by the federal government?

6. By what authority is our money made and its value determined?

CHAPTER II

THE SCHOOL DISTRICT

7. General Statement. For the convenience of administration, the state has been divided into various districts. Concerning each of these we are to learn in turn, as we study the work of each. The first form of organized government with which we have to do as soon as we are old enough to leave the home is that represented by the school. The school district is a certain territory set apart by law enacted by the state legislature. The number of these districts in the towns of the state in 1908 was 10,595. This, however, is not a fixed number, since the law permits two or more of these country districts to unite, or such united district to break up into its original parts. The law establishing these districts charges those who live within each with the duty of maintaining a school at least thirty-two weeks during the year and authorizing a property tax for their support.

8. Officers of the District. The law provides that there shall be one or three trustees, as the voters of the district may determine, a clerk, a collector, and a treasurer. If the district is known as a "union free school district," the number of trustees shall not be less than three nor more than nine. Every school district officer must be able to read and write and must be a voter of the district. The term of office, where there are several trustees, shall be for three years. If a single trustee, the term is one year.

All other officers are elected for a term of one year. Any officer of the school district who refuses to serve shall forfeit the sum of five dollars, to be used for the benefit of the district.

9. **Duties of Trustees.** The trustee, or trustees, of the school district has charge of all property belonging to the district; calls special meetings of the voters of the district; gives notices of the annual or of adjourned meetings; makes out the tax-list, apportioning to each taxable inhabitant his share of the school tax voted by the district; purchases or leases property as the district directs; insures the school building, library, furniture, and apparatus; employs a teacher and determines the salary of such and the length of term to be taught; prescribes the course of study, the rules for governing the school; engages a janitor; attends to the minor repairs; and may expend twenty-five dollars for necessary dictionary, maps, or other apparatus.

10. **Duties of the Other Officers.** The duties of the district clerk, collector, and treasurer are indicated by their titles. The records are kept and preserved by the *clerk* in a book provided for the purpose. He gives the required notices for all special and for the annual meetings, notifies persons of their election to office, etc. The *treasurer* has charge of all moneys belonging to the district, and pays out the same upon a written order from the trustee or trustees. He must make a detailed report of receipts and expenses at the annual meeting and to the trustees whenever directed. The *collector* collects the school tax as per list made out by the trustee. He is required to give a bond for the faithful performance of

his duties. He turns over to the treasurer all moneys collected. In case the district has no treasurer, the collector performs the duty of the treasurer. Where there is a separate treasurer, he is also required to furnish a bond for the faithful performance of his duties. In union free school districts, boards of education may appoint one of their own number as clerk, and shall also appoint a treasurer and collector. These officers are paid for their services either by vote of the district or by vote of the board of education.

11. Annual School Meeting. The annual school meeting of each school district shall be held in the school house the first Tuesday of May of each year, at 7.30 p.m., unless the hour is otherwise changed by vote of the previous meeting. Special meetings may be held as called by the trustee. Due notice of all annual and special meetings must be posted in at least five different places over the district, one of which must be upon the door of the school house.

12. Business of the School Meeting. The business of the school meeting is to elect officers; vote a tax, to pay the salary of the teacher, for the care of the school building, and for the heating of the same, and to pay district officers in case such officers are paid; take under consideration needed repairs or changes in the school building or of the need for a new building, a new or enlarged site, and such other matters as pertain to the general welfare of educational matters of the school district.

13. Who may vote at a School Meeting. Any person shall be entitled to vote at any school meeting for the election of officers, and upon any and all questions which may be brought before the meeting, who possesses the fol-

lowing qualifications: (1) is a citizen of the United States[1]; (2) is at least twenty-one years of age; (3) a resident of the school district for a period of at least thirty days immediately preceding the day of the meeting; and who *in addition* to the above qualifications has one of the following: (*a*) owns or hires or is under contract to own or hire real estate subject to taxation for school purposes; (*b*) is a parent of a child of school age whose child attended school at least eight weeks the preceding year; (*c*) any person who has permanently residing with him (or her) any child of school age (five to eighteen years old) who shall have attended school at least eight weeks the preceding year; (*d*) the owner of personal property exceeding fifty dollars in value and assessed upon the last preceding assessment roll of the town. Both men and women who meet the above qualifications are eligible to vote.

14. Political Independence of a School District. The state through its legislature has created a school district a corporation for the purpose of looking after the affairs of education within the district, and has given it full power in all matters pertaining to education. While it may be a part of a town or village, it is quite independent of these larger units of government in matters pertaining to education within the school district. The idea is to remove as far as possible all restrictions upon the will of the people in matters of education. The form of government represented by the school meeting is a pure democracy, *i.e.*, one in which all the voters meet to transact business.

[1] One must first be a citizen of the United States before he can be a citizen of the smallest unit of state government; thus it is seen that the foundation of all our government is citizenship according to federal law. It is not necessary to be a citizen of the state to vote at school meeting.

15. Union Free School District. Union free school districts are organized under the provision of the education law[1] and by special act of the state legislature. These districts have a board of education, clerk, treasurer, collector, whose duties include those of a common school district. As a rule, union free school districts are found only in villages and cities. The power of a board of education is greater than that of a trustee, and the course of study in a union free school is much more extensive than in the common school. If the union free school district includes a village of five thousand inhabitants or more, a special school officer, called a superintendent of schools, may be elected by the board of education, who has full charge of the schools of the district under rules adopted by the board of education.

16. School Neighborhood. A school neighborhood is a small district so situated that the children of school age residing within such district may best be served by attending school in another state. Such neighborhoods are established by law, and usually have a trustee and clerk. The voters of the neighborhood meet annually, as in a regular school district. Near state lines this arrangement is found to be advantageous. In some of our towns (Waverly, e.g.) the state line passes through the village or district which is essentially one although situated in two states.

17. Removals and Filling of Vacancies. Whenever it shall be proved to the satisfaction of the commissioner of education that any trustee, member of a board of education, clerk, collector, treasurer, school superintendent, dis-

[1] See education law, 1910.

trict superintendent, or other school officer has been guilty of any wilful violation or neglect of duty as set forth in the education law, or any other act pertaining to the common schools or other educational institution participating in state funds, or wilfully disobeying any decision, order, or regulation of the board of regents or of the commissioner of education, the commissioner of education has full power to remove such school officer from his office. A vacancy in the office of trustee may be filled by calling a special election of the voters of the district within thirty days after the office becomes vacant, or if such meeting is not called, the district superintendent may appoint a qualified person to fill the office. The trustees may appoint a qualified person to fill the office of clerk, collector, or treasurer should a vacancy occur in any of these offices.

QUESTIONS ON THE TEXT

1. Outline the work of the school meeting.
2. Name the duties of the school trustee.
3. How is a school tax determined, the rate established, and the tax of the individual worked out?
4. What advantage is there in having the school district independent from the town in the management of school affairs?
5. Who may vote at a school meeting?
6. What is a school neighborhood?
7. In what particulars does a union free school district differ from the ordinary school district?
8. Who has the power of removing school officials for neglect of duty?
9. If the office of school trustee becomes vacant, how may it be filled?
10. What are the powers and duties of the school trustee?
11. Compare the school meeting with the village and town meetings.

CHAPTER III

THE TOWN

18. The Town: its History. From the very early settlements in America, the town as a local unit of government has held a conspicuous place. It came to this country with the first settlers and down to the present moment continues to perform important local duties in this state and in several states. As we have seen in Chapter II, the state is divided into small units called school districts (10,595 in 1908). We are now to observe that it is also divided into small units considerably larger than the school district, and for quite a different purpose. These units are called towns and number 947. The territory embraced by the boundaries of the town constitutes a little republic by itself, with specific duties to perform with reference to town affairs. These duties are defined by law passed by the state legislature, which body also determines the number and size of towns. The reason for town government is that, as in the school district, there are many local matters, such as caring for the poor, prevention and punishment of crime, the building and care of roads and bridges, all of which pertain to the town, that can better be attended to by those immediately interested than by the larger divisions of the state, to which divisions the larger and more general affairs of government are delegated.

19. Town Government. Like the government of the nation, state, and county, the government of the town is

divided into three departments; namely, legislative (the town meeting), executive (as represented by the supervisor, clerk, assessors, collector, overseers of the poor, superintendent of highways, constables, and school directors), and judicial (justices of the peace).

20. The Town Meeting. The actual government of the town is the town meeting. This meeting is a gathering of voters of the town assembled according to state law for the sole purpose of considering the business of the town and for the election of officers to carry out the expressed wishes of the voters assembled. Any qualified voter may propose any question to his assembled townsmen which the law permits towns to consider, the same to be discussed by the voters present and decided by a majority vote. The people, as in the school meeting, are the government, dealing directly with local affairs pertaining to the immediate interests of the town. There is a distinction as to who constitutes the people; namely, only male citizens twenty-one years of age may vote in a town meeting. Women who are property owners, twenty-one years of age, may vote on questions for raising money. In the American system of government, the town meeting represents the largest area controlled directly by the assembled voters. This form of government is a pure democracy, and, because of its limited application as to area, has become extinct in the national form. The county, state, and nation are forms of representative democracy, or republican in form, as this kind of government is sometimes called and about which we will learn more later on.

21. Time of holding Town Meetings. At the present time the town meeting is not held uniformly in all the

counties of the state. In the counties of Chenango, Otsego, St. Lawrence, Schuyler, Tioga, and Tompkins (6), town meetings are held on the second Tuesday in February; in Cayuga, Cortland, and Schoharie counties (3), town meetings are held on the third Tuesday in February; in Wyoming and Yates counties (2), town meetings are held on the last Tuesday in February; in Essex and Franklin counties (2), town meetings are held the first Tuesday in March; in Livingston county (1), town meetings are held the second Tuesday in March; in Columbia and Hamilton counties (2), town meetings are held the third Tuesday in March; in Nassau and Suffolk counties (2), town meetings are held the first Tuesday in April; in the remaining counties of the state, excepting those included within the boundaries of the greater city of New York (42), town meetings are held the first Tuesday after the first Monday in November.

22. Powers of the Town Meeting. The assembled voters in a town meeting may consider any business pertaining to the welfare of the town not prohibited by federal or state law. They may elect town officers — supervisor, clerk, assessors, collector, overseer of the poor, superintendent of highways, school directors, constables. Any qualified voter of the town is eligible to any office excepting he already holds the office of county treasurer, district superintendent of schools, or school trustee, in which case he cannot hold the office of supervisor, since the supervisor distributes the state school money for his town. The officers of the town are elected by secret ballot in the same manner as state officers are chosen. The ballot contains the names of the various candidates, and the voting is super-

vised by inspectors of election. After the voting is finished the meeting is open for general business by the presiding officer, who is one of the justices of the peace. The town clerk is clerk of the town meeting. Any or all of the above duties may be performed at a special meeting of the town called for the purpose by the supervisor, together with certain other town officers, and upon the application of twenty-five tax-payers living within the town.

23. The Supervisor. The supervisor is the chief executive officer of the town. In addition to his duties as town officer, he represents the town in the board of supervisors, the legislative branch of the county government. As town officer, he receives two dollars a day for time actually spent, as county officer four dollars a day. As town officer, his duties are to receive and pay out all moneys raised for the public work of his town excepting moneys raised for the support of the poor and for highways, which goes to the respective officers in charge of this work for the town; receives and disburses the public school fund for the various districts of his town; he is a member of the town board. The supervisor is elected for two years.

24. The Town Clerk. The town clerk is custodian of the town records and is clerk of the town meeting. He not only keeps the records of the town and the proceedings of the town meeting, but also records births, deaths, marriages, and files certificates, chattel mortgages, and other such papers as are required by law to be filed in his office. The town clerk receives two dollars a day for time actually spent in the discharge of his duty, and fees for other duties. He is a member of the town board and assists the supervisor in preparing a list of jurors.

25. The Assessors.[1] Each town elects three assessors to appraise the property of individuals residing in the town in order to determine each property owner's share of the state, county, and town taxes. It is their duty to prepare the assessment roll for their town. Among other things this roll must contain the names of all taxable persons, with the statement of the real and personal property of each and its value. When this roll is completed, it is the duty of the assessors to give public notice that upon a certain day they will meet at a specified place to consider complaints against their valuation of property and correct any errors which may have gotten into the roll. The day thus specified is called "grievance day," and any person who objects to his assessment may appear in person before the assessors and have his assessment corrected by "swearing off" his assessment; that is, by making oath that he has been over-assessed. They assist the supervisor and town clerk in preparing jury lists. Assessors receive two dollars for actual time spent, and they serve for two years.

26. The Collector. When the assessors have finished their work and made out the assessment roll, it is turned over to the town clerk, who later delivers it to the supervisor. The board of supervisors at their annual meeting apportion to each town its share of the state and county tax. These taxes, together with the tax which each town raises for its own use, constitute the total tax which each town is to raise. To the tax roll thus completed, the board of supervisors affix a warrant (authority) under the seal of the county, signed by the chairman and clerk of

[1] Cities like towns have assessors with like duties.

the board, directing the collector of the town (or other tax district, e.g., village or city) to whom it is directed to collect from each person named in the tax roll the tax set opposite each name.[1] The collector then proceeds to collect the tax. He turns over to the superintendent of highways of the town, overseers of the poor, and to the supervisor such portions of the money as the town voted to expend upon the highways, care of the poor, and for other expenses of the town respectively, and to the county treasurer the residue of the money collected. The collector has to give a bond for the faithful performance of his duty. His term is for two years, and he receives a certain percentage of the tax collected as a compensation, it being supposed that if the amount he receives for his services depends upon the amount of tax he collects, he will make a better collector than he would if he were working for a fixed salary. He may cause property to be sold when the taxes are not paid.

27. Constables. It is the business of the town to preserve peace. To enforce the laws against wrongdoers, each town has its police or constables, from one to five in number. These officers arrest disorderly persons and take them before a justice of the peace for trial and punishment. They serve summonses (orders to appear in court) and subpoenas (orders to appear in court as wit-

[1] You have learned in arithmetic how each man's share of a tax is obtained. First, you found the total tax to be raised for all purposes — state, county, town, village, or city. Then you divided this total tax by the total assessed valuation of the property to be taxed. This gave the tax *rate*. Then you multiplied each man's assessment by this rate and the result was his tax. *Problem:* The taxable property of a town is assessed at $8,525,675. If your assessment is $6700, how much of the total tax of $73,475 will you pay?

nesses in a suit at law). Thus the town has a distinct duty to perform in the care of our peace and happiness, the safety of our persons and property.

28. Town Superintendent of Roads and Bridges. Our roads are the centers of commercial life in towns as streets are in cities. To have poor roads full of ruts and stones, poorly constructed sluices and bridges which endanger the lives of horses and ourselves, damage or destroy our property, is very poor business. Yet we still find bridges washed away, stones in the ruts, and other obstructions in the highways of the country. These make travel difficult to those passing through the town, and make it very expensive to farmers to get their produce to market and the necessary supplies home, since their teams cannot haul much more than half a load. It is, therefore, to the good of those who live in the country as well as to those passing through it that the roads be well built and kept in good condition. In this matter the town has large responsibilities. To stimulate towns to further activities in the matter of good roads, the state will assist to the extent of from fifty to ninety percent of the cost of construction. This work is under the direction of the *town superintendent* of roads and bridges. His term is for two years, and he is paid a salary of five dollars per day. He is charged with the general duty of keeping the roads, sluices, culverts, and bridges in repair and free from stones and snow. For this purpose he may divide the town into sections, employ persons with teams and tools. With the approval of the town board, he may purchase stone crushers, steam rollers, traction engines, road machines, and other machinery and tools to be used for the construction

of new roads and for the repair of old ones. With the approval of the county superintendent of roads, he may hire any or all of the above machines, the expense for which to be borne by the town. In certain instances, new roads may be constructed at the joint expenses of state, county, and town where such roads form a part of a county system of main highways.

29. Overseers of the Poor. Two thousand years ago, the question as to how the poor and the sick should be cared for by those who were well and able was under discussion. This discussion has been crystallized and handed down to us in the story of the good Samaritan. Read it, for nowhere else is our duty to our unfortunate neighbor so clearly stated. For the care of the town's poor one or two officers, known as overseers of the poor, are chosen at the town meeting for a term of two years. It is their duty to inquire carefully into the needs of the very poor, and to assist worthy cases at their homes, or, if the case warrants, send the needy person to the county almshouse. This should not be done, however, excepting as a last resort. Relatives who are able are obliged to provide for their own poor. In many instances the aid needed is only temporary and due to illness or failure to secure work. The expense is borne by the town and the tax voted at the town meeting. These officers are paid two dollars per day for actual services.

30. Justices of the Peace. For the administration of all minor matters of both criminal and civil law (criminal law has more to do with violence in various forms, while civil law deals with property and other damages) towns elect four justices of the peace. A justice court is the

lowest court in the state; its jurisdiction does not extend to cases at law involving more than $200, while murderers and burglars cannot be tried in a justice court. They may, however, be examined and sent to jail to await the action of a higher court. If the decision of the justice court is not satisfactory to either party to the suit, it may be appealed; that is, taken to the county court for settlement. Justices of the peace are chosen for four years and are paid by fees. They are members of the town board, and when serving in such capacity receive two dollars per day. A justice of the peace presides at the town meeting.

31. The Town Board. The town board consists of the supervisor, town clerk, two or more of the justices of the peace. The duties of the board are to pass upon all bills and accounts of the various town officers, and to consider charges and accounts presented against the town by any person. The board has certain joint duties with the town superintendent of highways. The members receive two dollars per day for services rendered. Appeals to the county board of supervisors may be taken from the decision of the town board, which has power to reverse its decisions.

32. Town Auditors. If the voters at the town meeting so direct, they may elect three auditors to perform the duties otherwise performed by the town board. It is not, however, the custom to do this.

33. Fence Viewers. The superintendent of highways and the assessors constitute a board of fence viewers in each town. Their duties consist in adjusting disputes over line fences between adjoining owners and the killing of sheep by dogs. They receive a fee for services rendered.

34. School Directors. Two school directors are elected in each town for a term of five years, and receive two dollars per day for actual service, and are allowed traveling expenses. All the directors of a supervisory school district, which may include several towns, meet and organize, after which they elect by ballot a district superintendent of schools for a term of five years. There are about 1894 school directors in the state. In their choice of a district superintendent, directors are limited by law to candidates who hold a license to teach in any of the public schools of the state, that is, in city and village schools as well as in country schools, which candidates in addition must pass the state examination covering the teaching and supervision of courses in agriculture.

35. Inspectors of Election. The number of inspectors of election depends upon the number of election districts in the town. There are four inspectors for each district, two chosen at the town meeting and two appointed by the town board. They are representatives of the two political parties casting the highest number of votes in the previous November election. Their duty is to serve at the election, checking off the name, from the registered list of voters, of each voter as he casts his ballot. They also count the votes after the polls have been closed and certify to the correctness of the returns. They serve for two years and are paid two dollars per day for actual service.

36. Vacancies. Vacancies in any of the offices of the town may be filled by the town board.

Name	Number chosen	Length of term	Compensation	Main duties
LEGISLATIVE BRANCH:				
The Town Meeting	All voters			To elect town officers; raise and appropriate money.
EXECUTIVE BRANCH:				
Supervisor	1	2 years	$2 per diem	To manage finances. (*To represent town in county legislature.*)
Town Clerk	1	"	" " "	To care for and keep town records.
Assessors	3	"	" " "	To value property for taxation. (*Fence Viewer.*)
Collector	1	"	Percentage	To collect taxes. [*Viewer.*)
Superintendent of Highways	1	"	$5 per diem	To take charge of roads, bridges, etc. (*Fence*
Overseer of the Poor	1 or 2	"	$2 " "	To care for the poor.
Constables	1 to 5	"	Fees	To make arrests, serve papers, and execute orders of justices' court.
Town Board (Supervisor, Town Clerk, Two or more Justices)			$2 per diem	To audit accounts and claims.
Fence Viewers (Superintendent of highways and assessors)				Settle line fence disputes and claims for the killing of sheep.
School Directors	2	3 years	$2 per diem	Elect district superintendent.
Inspectors of Election	4	2 "	" " "	Serve at elections, checking voters, certifying returns.
JUDICIAL BRANCH:				
Justices of the Peace	4	4 years	Fees	To try minor criminal and civil cases.

NOTE. — The above officers are chosen at the town meeting. Vacancies may be filled by the town board.

QUESTIONS ON THE TEXT

1. Briefly state the history of town government in this country.
2. What business is transacted at a town meeting?
3. Who may vote at a town meeting?
4. What are the qualifications for holding office in the town government? Are there any exceptions to these qualifications?
5. Name the officers elected at a town meeting.
6. When is the supervisor a town officer and when a county officer?
7. Compare the executive power of the supervisor with that of the sheriff and governor.
8. What are the duties of the assessors? Explain fully. What is meant by the expressions "grievance day," "swearing off"?
9. How is the total tax which the town is to raise made up?
10. To whom does the collector of the total tax assessed against the property of the town turn over the moneys thus collected?
11. Why is a bond required of the collector for the faithful performance of his duty?
12. What principle is involved in paying the collector a commission rather than a salary in the collection of taxes?
13. How many constables in your town? What are their duties?
14. Who owns the roads and bridges in the town? Why are they of universal concern, 1st, to the people of the town; 2d, to the people of the county; 3d, to the people of the state?
15. What part does the state and county take in the building of good roads in the town? Is this justifiable? Why?
16. What is the name of the officer who has charge of the roads and bridges in the town? How is he elected? For how long? What is his compensation?
17. Why should a town be charged with the care of its poor? To what officers is this work entrusted?
18. Outline the proceedings in a justice court.
19. What officers of the town constitute the town board? Mention the duties of the town board.
20. If town auditors are elected at a town meeting, what body of town officers do they supplant?
21. What are the duties of the fence viewers and what town officers constitute this board?
22. How many school directors are elected in each town? What are their duties?

CHAPTER IV

THE VILLAGE

37. Why we have Villages. You have probably noticed that many villages are situated upon some body of water; frequently this body of water is a running stream furnishing water power. As the country became settled, this water power was utilized for the purpose of grinding the grain instead of its being done by hand, as was the custom before we had grist mills. The miller exchanged his labor with farmers for food and clothing for his family, which of course he could not produce while attending the mill. The growing need of the farmers for wagons and sleighs made the wheelwright necessary. He located on the same stream with the miller, that he too might use the water power to assist him in turning spokes and hubs for wheels and in shaping other parts of his wagons and sleighs. The blacksmith followed the wheelwright to iron the wagons and sleighs and to shoe the farmers' horses. Thus the surrounding country journeyed to the miller, the wheelwright, and the blacksmith, and we had the nucleus of the village. Soon it was found more economical to have the food stuffs and clothing which could not be raised or manufactured in the community brought there by one man rather than for each to journey long distances for himself. Thus the merchant located near the miller and the wheelwright and the village grew. In process of time, the schoolmaster and the preacher fol-

lowed, manufactories increased, and the surplus goods and products were taken to other places and exchanged for things not produced by the community. Thus the little settlement grew into a village. Because of a large number of families thus settling upon a comparatively small area, certain necessities arise, such as the need of fire and police protection, sidewalks, streets, health regulations, schools, etc., which did not exist before such settlements were formed. Hence the necessity of some organization and agreement concerning these matters.

38. Relation of Village to Town. A village, whether or not it is incorporated, still remains a part of the town or towns in which it is located. Its residents pay taxes to the town government and are subject to the laws passed at the town meeting, in which they may take part. For their own special purposes, however, a separate government may be formed, providing, of course, the village is sufficiently large to meet the requirements under state law, for villages, like towns, are created by state law, and what a village may or may not do is strictly limited by state law.

39. Why a Separate Village Government is Needed. By the collection of a large number of buildings and the massing of people together on a small area, the dangers to life and property correspondingly increase and special precautions have to be taken in order to reduce this risk as much as possible. One of the means for reducing the risk to property is the procuring of an abundant water supply to be used in case of fire. In order to use this water supply in case of fire, it becomes necessary to bring the water in pipes into the village, distribute it through

the streets, and to provide fire apparatus. It has been found more economical for all to contribute toward a general supply and apparatus than for each one to have his own separate supply and apparatus to be used for the same purpose. In the same way some protection to life has been secured by uniting upon a plan whereby garbage and other refuse shall be collected at the expense of the village and taken away and disposed of. Convenience in travelling has made it necessary to have sidewalks, paved streets, and to have the streets lighted. To enforce the regulations of the village or city, policemen have been found necessary, courts in which to try the offenders, larger schools established than the country districts require, and a number of other matters of local importance, all of which have been caused by the settlement of a large number of people in a small area. The expense for maintaining these, as a matter of common justice, rests with those receiving the benefits and not with the people of the towns.

40. Formation of Villages. The duty of incorporating villages and restricting their powers of taxation, assessment, borrowing money, contracting debts, loaning their credit, etc., is intrusted by the state constitution to the legislature with a view to preventing abuses along these lines. The legislature has accordingly provided that a territory not exceeding one square mile, and having a population of at least two hundred, and not including a city or village already incorporated, may become incorporated. The first step toward such incorporation must be taken by the people. At least twenty-five adult freeholders (land-owners) and residents of the territory must

submit a proposition for incorporation to their supervisor. If he consents, the matter is submitted to the voters at a general election; if not, the freeholders may appeal to the county court. In any case, the proposition must be finally passed by the majority of the voters in the district concerned. If a majority approves, then, upon filing a certificate of their approval in the office of the county clerk, the village is incorporated.

41. Villages Classified. For convenience in legislating, villages have been divided according to population into four classes: Those of the first class must contain 5000 inhabitants or over; those of the second class, from 3000 to 5000; those of the third class, from 1000 to 3000; those of the fourth class, from 200 to 1000. Formerly a village desiring to incorporate had to go to the legislature for a charter defining its boundaries, naming its officers, their duties, etc.; now all this is provided for by general laws applying to all alike who now ask to be incorporated. Has your village a charter?

42. Village Officers and their Election. The officers of a village are the president, trustees, clerk, treasurer, assessors, police justices, street commissioners. These officers, with the exception of the commissioners, who are appointed by the trustees, and the clerk, who may be either appointed by the trustees or elected by the people, shall be elected in the villages throughout the state on the third Tuesday in March unless the date coincides with that of the town meeting of the town in which any part of the village may be situated or with the general election, in which case the election is held on the following day. One of the reasons why a separate election is held for village officers

is in order that the choosing of such officials whose duties are purely local may not in any wise be overshadowed by being connected with the election of higher officials such as state and federal. Thus the business of a village is kept separate and considered on its own merits.

43. The Legislative Branch. The legislative branch of the village government consists of the village meeting, the board of trustees, and the village president. Villages of the first class must have not less than two nor more than eight trustees; of the second class not less than two nor more than six; of the third and fourth classes not more than four nor less than two trustees.

44. The Village Meeting. Like the town meeting, the village meeting has legislative powers. It not only selects the village officers, but all questions relating to the large expenditure of village funds must be submitted to the tax-paying voters of the village. Some of these questions are: Shall the village put in or extend the waterworks system, create or equip a fire department, build a police station, put in or extend a system of street lighting, street paving, sewer and drainage systems, etc.? Upon all questions relating to expenditure of funds only tax-payers may vote; for the election of officers any qualified voter at a town meeting may vote.

45. The Board of Trustees. The state law relating to villages provides that, among other duties, a board of trustees have the following: namely, the power to establish a lockup, pound, clock, and market; to establish fire limits, name streets, employ an attorney, construct drains and regulate water courses, establish and regulate a village water supply, and provide lights; and the trustees, as a

board, have all the powers of separate boards of fire, water, light, sewer, and cemetery commissioners, if the village has no such separate boards. The trustees may make ordinances for the preservation of the peace, the order of the streets and public places of the village, regulate public amusements, the speed of locomotives and cars at street crossings, the speed of automobiles and other power vehicles, regulate the use of fireworks, inflammable materials and gunpowder, and may issue certain uniform licenses. The board holds an annual meeting on the Monday following the village meeting. A majority, including the village president, constitute a quorum to do business. Laws passed by the board of trustees are called ordinances. Village trustees are elected for a term of two years, one-half of their number being chosen at each annual village meeting (election).

46. The Executive Branch. The executive branch of the village government consists of the village president, clerk, assessors, overseer of the poor, collector, street commissioner, police, and such other officers and executive boards and commissions as the village may have. These officers are to carry out the wishes of the people as expressed in the annual village meeting, and the ordinances of the board of trustees.

47. The Village President. The chief executive officer of the village is the president, chosen by the voters at the annual village election for one year and serves without pay. He is the head of the police force, as the governor is of the militia and the president of the United States is of the army. He presides at all meetings of the board of trustees and has a vote in that body, but does not have

the veto power over its proceedings. It is his duty to enforce the ordinances passed by the board of trustees, and he may sue any person or corporation in the name of the village for the collection of any sum due it. He must be a property owner paying taxes for the support of the village government. Since the president has a vote in the board of trustees, he has legislative as well as executive power.

48. Other Executive Officers. The other executive officers of the village are the clerk, overseer of the poor, assessors, collector, street commissioner, and treasurer. The *treasurer* receives and pays out the public money belonging to the village; the *collector* collects the tax voted to defray the annual expenses for maintaining improvements and the village government; the *assessors* value the property upon which the tax is to be raised (see paragraph on assessors in the chapter on town, § 25); the *clerk* acts as clerk of the board of trustees, and is also custodian of the public records of the village; the *commissioner* of streets has charge of the streets, sidewalks, and bridges, under the direction of the board of trustees, and may also arrange for and supervise the disposal of garbage.

49. The Judicial Branch. The judicial branch of the village consists of a police justice, who is elected every four years by the voters of the village at the annual election. Persons charged with the violation of the village ordinances are brought before the police justice, where they are tried; that is, a careful inquiry is made as to whether or not they have committed the offence as charged. If found guilty, the justice pronounces what their punish-

ment is to be; this is called a sentence. If they are shown to be innocent, the justice dismisses the charge against them and they go free. A policeman usually makes the arrest, brings the accused person before the police justice for trial. The police justice may direct that criminals be arrested, and he may hold a court of special sessions for the trial of misdemeanors (petty crimes) committed in the village. In as much as a village may be sued or may sue in courts of law like an individual for any sum of money which it owes or which is due it, the board of trustees appoint a *village attorney*, whose duty it is to represent the interests of the village in all matters of law to which the village is a party.

50. Board of Education. The large number of children in a village make large demands for schools and teachers. In order that their interests may be carefully looked after, a board of education of not less than three nor more than nine members are elected at the annual charter election of the village, the ticket being marked "for school trustee." Incorporated villages are usually organized into a union free school district, and as such is entirely free from the village government in all matters pertaining to the education of the children of the village. The expenditure of large sums of money for school buildings or extensions, sites, etc., must be submitted to the voters, but in all minor expenditures for repairs, extensions, etc., the board of education has full authority. It also has full authority to prescribe the course of study, the text-books to be used, and to supervise the work of the schools; to hire duly qualified teachers, janitors, and librarian; to provide for the heating, lighting, and cleaning of the buildings; to

insure all school property and have full charge of the same; to provide for the medical inspection of the pupils, establish night schools and kindergartens, and to otherwise provide for an efficient school or system of schools. For the maintenance of these things, the board of education is empowered to raise and collect a tax upon the taxable property of the village. The officers of the board of education are a president, treasurer, clerk, and collector, who perform the same duties as these officers perform in the school district. In villages of five thousand inhabitants or more the board of education may appoint a superintendent of schools who becomes the executive officer of the board, recommending teachers, text-books, and supplies, advising as to the course of study, library and apparatus, rules and regulations for the management of the schools.

51. Public Utilities. By public utilities we mean those conveniences and necessities furnished by some central authorities; for example, street lights, water supply. This service is usually performed by a private corporation, although in some instances it is done by the village, especially the village water supply. The tendency seems to be toward public ownership of such utilities. The reason for this is apparent, when we consider that water is needed for the cleaning of our streets, the flushing of our sewers, and for our fire department, as well as in our homes. An abundant and pure water supply increases the value of property, makes life more secure, reduces the risk of loss of property by fire, reduces thereby the cost of insurance, and makes such places more desirable for business and residence. Where these utilities

are conducted by private corporations, they come under the supervision of the state public service commission, whose duty it is to look after the rights of individual consumers. Streets and sidewalks are public property. These are laid out, built, and maintained by general ordinances passed by the board of trustees. The laying out, building, paving, and repairing is a public expense, to be borne by the property owners of the village. The method of raising the tax is sometimes divided between the village as a whole and the abutting property of the street improved. Sidewalks are built by the owners of the abutting property. The same method is followed in the construction of sewers and drains; that is, either making it a general charge upon the whole village or dividing between the village and abutting property. Streets are to be used for the general purpose of travel and traffic. They may also be used on the surface for street cars, poles may be erected along the sides for electric light and telephone wires, and beneath the surface may be used for sewers and water-mains. Whenever streets are so used by private corporations, consent must first be had from the village. This consent is called a franchise. A franchise is obtained by making application to the village trustees, who may vote to grant a franchise for a limited number of years or for a longer period. A franchise is an agreement between the village and a private corporation to whom it is granted, giving the corporation permission to do certain things, to use the streets for certain purposes, in return for which they are to establish the new utilities within the village. These franchises usually relate to street lighting, water supply,

street railways, and telephones. Generally speaking, a franchise should be an agreement for a limited number of years in order to protect the corporation and also the village. A certain percent of the gross earnings of the corporation under the franchise should go into the treasury of the village.

52. Fire Protection. For protection against fire, a fire department is organized. This usually consists of volunteers, occasionally of paid firemen. The village always supplies hose, hose carts, engines, hooks and ladders, and various other devices for the successful fighting of fire. It also controls hydrants at different parts of the village for the use of the firemen.

53. The Board of Health. The board of health has under its immediate supervision the general health of the village. It has the right to quarantine houses where there are cases of contagious disease, diphtheria, scarlet fever, etc.; to test the water supply as to its purity and suggest methods of improvement; to see that all refuse, garbage, etc., is properly cared for. Where there are sewers the board has the right to force all public and private property to connect with the same; to call attention to the necessary cleaning of the streets in case of a neglect of the regular street commissioner where there is such an officer. The care of the public health (our health), shielding us from unnecessary exposure is important. Persons having contagious diseases, that is, diseases which can be given to others, should gladly submit to quarantine, that is, to being isolated or shut away from others. Not observing quarantine regulations is punishable by law.

	Number	Qualifications	How chosen	Term	Main duties
LEGISLATIVE BRANCH:					
Board of Trustees (With village president as a member)	2–8	Must be tax-payers	Elected at village meeting	2 years	To make by-laws; appropriate public moneys; maintain waterworks, sewers, streets, police and fire dept., regulate certain trades, fix salaries.
EXECUTIVE BRANCH:					
Village President	1	A tax-payer	"	1 year	To see that the by-laws of the village are enforced and to have general charge of village affairs.
Treasurer	1	A resident	"	"	To receive and pay out public moneys.
Clerk	1	"	"	"	To keep the village records and act as clerk for the board of trustees.
Assessors	3	Residents	"	"	To value taxable property.
Tax Collector	1	A resident	"	"	To collect the taxes.
Street Commissioner	1	"	"	"	To take charge of the building and repairing of streets and bridges.
Board of Health	3–7	Residents	Appointed by trustees	"	To take charge of the public health and elect a *health officer*.
JUDICIAL BRANCH:					
Police Justice	1	A resident	Elected	4 years	To try minor criminal offences and violations of village by-laws.

NOTE.—The educational affairs of a village are in the hands of a board of education chosen by the voters of the village (men and women) at the school meeting. This board has legislative, executive, and judicial powers.

QUESTIONS ON THE TEXT

1. Show how natural advantages determine to some extent the location of a village.

2. Show how the village, whether incorporated or otherwise, is still subject to the town government.

3. Why is a separate government needed for the village?

4. What authority does the state constitution give to the legislature over the affairs of the village?

5. What are the steps necessary to bring about the incorporation of a village?

6. Give the different classes of villages and tell to what class your village belongs.

7. Mention the officers of the village and one duty performed by each.

8. What is the advantage of holding the village election the third Tuesday in March instead of at the general election in November?

9. Mention the three parts of the legislative branch of the village government. Give one illustration of legislation under each branch.

10. Outline the work done at the village meeting. Why should all questions relating to a large expenditure of funds be submitted to the tax paying voters of the village?

11. What village authority has the power to establish fire limits, employ an attorney, regulate the village water supply?

12. Name the executive officers of the village and one duty of each.

13. Compare the chief executive officer of the village with the chief executive officer of the town and county.

14. Who would try persons charged with the violation of a village ordinance?

15. What are the duties of the village attorney?

16. Show why it is better to separate the schools of a village and their management from the village government.

17. Give the powers and duties of a board of education and the method of their election.

18. Show how an abundant and pure water supply increases the value of property.

19. What is a franchise and how is it obtained?

20. Why is it better for a village to limit its franchises?

CHAPTER V

THE CITY

54. General Statement. A city might be called an overgrown village. At one time it was a village, and in the early beginning probably a very small settlement. What has been said in the chapter on village applies equally well to the city. The organization and government are similar. The city, therefore, might be characterized as an intensified village. Like villages, cities are usually located in the neighborhood of some natural advantage, such as water power, mineral deposits, excellent sea or lake port, or navigable river. Since our cities were located before the days of railroads, canals, steamships, and electricity, the reason for thus selecting a spot favored by nature is even more apparent than under present conditions. In the study of your city it is well to note these natural advantages and to learn as much as possible about its early history. Learn, also, about the government of your city, its various activities, who is responsible, and to whom responsible, for the faithful discharge of the duties connected with these activities, how people get appointed or elected to the positions which they hold, how delinquent officials may be made to do their duty, the methods used in governing other cities; in short, to ascertain in detail those things which lead to an intelligent understanding of the conditions in your city, why they exist, and how they may be continued or changed.

A City Hall

Devoted entirely to the administration of city affairs.

55. The Street. The streets and the parks of a city are owned and cared for by the city and constitute about all the unoccupied space within the city limits save unoccupied lots here and there which are private property. It will be seen, therefore, that the street in a city is more emphatically the center of all city life — that is, of traffic, travel, utilities, etc. — than in the village or the road in the country, due to the difference in density of the population. Everyone is interested in the streets of his city — in having them well laid out, well paved and curbed, properly bridged, cleaned and drained, suitable gutters, sidewalks, sewers, etc. As a matter of duty we should know how these matters are brought about, how permission may be obtained to use the streets for private gain as well as for public good, for what streets may be used below the surface, on the surface, above the surface, who pays for all of these things, how the money is obtained, and the many other interesting things about our streets demanding constant care and expense.

56. How Streets are laid out: New Problems. There is little or no difficulty experienced in the matter of laying out of streets or the putting through a new street in the early beginning of a city. Later, however, when the city has grown and the property become exceedingly valuable, difficulties arise which did not before exist. In the case of difficulty, however, at the beginning or at a later period, the process of taking private property for public use would be the same. This process is called the right of *eminent domain* (see sect. 7, p. ii). Article I, section 6, of the constitution provides that private property shall not be taken for public use without due process of law,

and without just compensation. Due process of law would be that the city present to the supreme court a petition to have the street put through in the desired locality. The supreme court would appoint three commissioners, whose duty it would be to take evidence as to the need of the street and the value of the property. If the street is ordered by the commissioners, the property is said to be *condemned* and then may be used for the public good. The owner of the property is awarded suitable damages; that is, is paid for his property. These proceedings are frequently referred to as *condemnation proceedings*. It not infrequently happens that streets are laid out by the owner of the property, who also provides proper drains, sewers, curbs, sidewalks, lights, etc., at his own expense, knowing full well that these improvements will increase the value of his property and make it more saleable. It sometimes happens, also, that if the city will make the above improvements through private property the owner will give the city the right of way through his property since it increases the value of the remainder. In these last two instances condemnation proceedings with the attendant expenses would be unnecessary.

57. Use of the Streets. A street or country road is used primarily for travel and traffic. These streets are expensive, their first cost for grading, paving, etc., being borne by the abutting property. Along them we have the right to pass for the ordinary purposes of social and commercial life; but we have no right to interfere with the same rights of others. We would not, therefore, be permitted to drive through them at a high rate of speed, to make a speech on a street corner, or to organize a parade

without first obtaining permission from the proper officer. In congested centers, convenience and safety require that we observe traffic regulations and pass down the right-hand side of the street. Streets should not be paved until water, gas, and sewer mains are laid and connections brought inside of the curb line for each building and vacant lot in order that the unnecessary expense of tearing up the pavement and relaying it may be avoided. Village and city streets are further used for various purposes, among which are the following: (1) *below the surface* — for sewer and drain pipes, gas and water mains, electric light, telephone and telegraph wires, and subways for all kinds of traffic; (2) *on the surface* — for all kinds of vehicles, pedestrians, trolley cars, steam railways at grade crossings or running parallel with and through streets at grade, and on the sides for electric light, telephone and telegraph poles; (3) *above the surface* — for elevated steam, and electric railroads to facilitate traffic, especially in congested centers.

58. How Permission to use the Streets is Gained. As a rule, cities own their own sewer and drainage systems, and the tendency seems to be toward owning their water systems, in as much as the successful use of sewers compel the use of the public water supply, which is equivalent to compelling people to patronize a private enterprise. Furthermore, the efficiency of the fire and street-cleaning departments are largely dependent upon the abundance and efficiency of the water supply. There is a further tendency for cities to own or control the electric light and gas plants. In a majority of cases, however, public utilities, such as above mentioned, are owned and operated by

private corporations. When this is the case, it becomes necessary for these private companies to obtain permission to use the streets for their pipe lines below the surface or for their poles along the sides. This permission is granted by the common council, and is called a *franchise* or charter defining the rights, duties, and limitations of the company named in the franchise. There is a growing tendency toward limiting these franchises to a certain number of years, sufficiently long to protect the company making the large investment and sufficiently short to protect the city granting the privilege, which privilege establishes a monopoly usually in the commodity manufactured or supplied by the company. Corporations are sometimes required to pay into the treasury of the city a certain percent of the gross earnings, thus sharing in the burden of maintaining the city government. In as much as the franchise empowers a corporation to tear up pavements, which it is required to replace, but which cannot be done as well as formerly as a rule, it is only just that the corporation bear its full share of the expense of city government.

59. A City's Business. There are many things which can be better and more economically done by the city than by different individuals. This business is performed under the direction of well organized departments of education, health, fire, police, justice, care of the poor, finance, etc., responsible to the mayor and common council, excepting education. This work calls for a large number of employees, and for the same business and executive ability that is required in managing a large department store. It makes no difference whether it is New York, St. Peters-

burg, or Pekin, the same principles of pure business are involved. Politics, therefore, should form no part in the selection of city officials, who should be chosen for their known business ability and sterling integrity. An employee of the city drawing a day's wage should be made to render the same service that he would render a private individual. This, however, is not always done.

60. The City Charter. The source of city government is the charter granted by the state legislature. This charter or constitution defines the boundaries of the city, divides it into wards, names the officers to be elected, setting forth their powers and duties and authorizing the citizens to elect such officers. When a city is thus organized, it becomes independent of the towns or town included wholly or in part within the city boundary. Where the whole town or towns are thus included, town governments cease altogether, and the same is true for that part of a town included within the boundaries of a city. The government of a city, like that of the nation, state, and county, is divided into legislative, executive, and judicial departments, but no department of the city government exercises authority unless specifically granted by its charter, its fundamental law made for it by the state legislature. A city government, therefore, is one of strictly delegated powers.

61. Cities Classified. All cities are divided, according to the state constitution, into three classes. The first class includes cities having a population of 175,000 or more; the second class includes those cities having a population of over 50,000 and less than 250,000; the third class includes all cities having a population of 50,000 or

less. In granting a charter, the legislature does not lose its power to regulate the city's affairs. It may pass general laws affecting all the cities of a class or of all classes, or it may pass special laws relating to a single city or to a less number than is represented by a whole class. General city laws may be enacted by the legislature at will, and thus the charters become modified. In the case of special city laws, however, the case is different. Such laws have to be referred to the mayor of the city concerned, to be considered by him in cities of the first class, and by the mayor and common council in all other cities, and returned to the legislature, if in session, or to the governor, if the legislature is not in session, within fifteen days, together with a memorandum of approval or disapproval. If the bill is approved by the city authorities, it then becomes like any other bill, namely, subject to the approval or veto of the governor before becoming a law or being dropped. If the city disapproves, then the legislature may repass the bill, and it shall then be subject, like any other bill, to the action of the governor. Before such action is taken, however, the legislature must provide for a public hearing concerning any such bill, due notice of which is given to the city or cities concerned.

62. Choosing of City Officials. In cities of the first and second classes, city elections are held in the odd numbered years, and the tendency is to adopt this custom in cities of the third class. The reason for thus holding city elections is that federal and state elections are held in the even numbered years, and it is thought that interest in these larger elections would minimize the importance of local affairs. While city affairs, as has been pointed

out, are practically of a business nature, nevertheless political parties strive to entrench themselves in power in both federal and state matters by the advantage gained by controlling city government and patronage. It is the duty, however, of citizens to break up this custom and to insist upon the choice of men whose business ability, honesty, and efficiency are beyond question. One of the reasons why it is at times difficult to get such men to become candidates for office is because of severe and usually baseless criticism, to which they are subject from the day of their nomination until the close of their administration.

63. Legislative Department. The legislative department of a city consists of a board of aldermen or common council and the people.[1] The members of this body are sometimes elected by wards, each ward electing one member or at large by the whole city. The term of office is for two years. The legislative powers of the board of aldermen or common council are defined by the city charter, and are confined to the city limits. They may pass ordinances regulating the use of the streets, sewers, drains, docks, parks, and public buildings, and for the government of the city's local affairs. It may also levy taxes for the support of the city government and other local purposes, as provided for by state law, may borrow money for city improvements under certain restrictions, fix the salaries of city officials, apportion the public money for use by the different departments of the city's activities, grant franchises, licenses, and regulate traffic and certain trades.

[1] City charters usually provide that questions involving the expenditures of large sums shall first be submitted to vote of the people. See *School Civics*, p. 287.

In cities of the second class the city's business is carried on by the mayor and common council, and the departments of public instruction, public works, finance, public safety, assessment and taxation, charities and correction, justice, estimate and apportionment, and law. Some cities of the third class also have many of the above departments.

64. Executive Department. The mayor is the chief executive officer of the city. He is elected by the voters of the whole city. His duties are similar to those of the governor; namely, he is the head of the police force, as the governor is of the militia, and it is his duty to preserve peace and enforce the ordinance of the common council, of which body he is the presiding officer in some cities, while in others a president of the board of aldermen is elected by the voters of the entire city. Like the governor, the mayor has the power of veto over the acts of the council, which body, however, may repass the measure by a two-thirds vote, when the ordinance becomes local law without the mayor's approval. Many of the other executive officers connected with the departments mentioned in the preceding paragraph are appointed by the mayor, approved by the common council, and many of the city officers may be removed by him. Article V, section 9, of the state constitution, however, provides that in exercising his power of appointment the mayor shall be subject to the civil service laws of the state and appointments shall be made according to merit and fitness, to be ascertained as far as possible by competitive examinations, preference being given to honorably discharged soldiers and sailors of the United States who took part in the late civil war. Where

the mayor is not the presiding officer of the common council, and frequently when he is, he prepares a message outlining to the council such matters as in his judgment demand their attention. Thus it will be seen that the mayor has both legislative and executive power, and that his duties are similar to those of the president and the governor over a much smaller field.

65. Other Executive Officers. Associated with the mayor in the executive work of the city are the treasurer or chamberlain, assessors, tax collector, when this work is not done by the chamberlain, city attorney, street commissioners, and the heads of the various departments mentioned in paragraph sixty-three. Many of these officials are appointed by the mayor, some of them elected by the people. Their work is sufficiently indicated by their names and by the outline given in the chapter on villages, having many of the same officers. In as much as the duties vary in different cities, a study of the city charter in each case is necessary to understand the duties of one's own city.

66. Judicial Department. The judicial department consists of one or more judges elected by the voters of the whole city. In the greater city of New York, a certain number of the city judges are appointed by the mayor, and a certain number elected by the people. City courts try cases for the violation of some city ordinance; they are also a part of the judicial system of the state, and as such try cases involving the violation of state laws both civil and criminal. If the sum involved in a civil suit is large, or if the offence in a criminal case is of a more serious nature, the case is tried by a higher state court. For the

trial of offences against children the larger cities have established juvenile courts. Again, in the matter of city courts, it will be necessary to study the charter of your city, in as much as the number and organization of the courts differ considerably in the different cities.

67. Term of City Officers. Many city officers may be removed by state authority for sufficient cause. In all cities of the first and second classes, city officers in the legislative and executive departments are elected for a term of two years, a plan which is also being quite generally adopted in the cities of the third class. Appointive officers usually have the same length of term as the elective officers who make the appointments, although in some cities commissioners of education, of public works, fire and police departments, and some others are appointed for longer terms. Where there is more than one city judge, the term is usually from four to six years if the judges are elected, and for a longer term if appointed by the mayor. The salaries for the same officer differ so widely that it is inexpedient to even make a general statement. In some cities the mayor and aldermen receive no compensation, and this is the general rule concerning commissioners of education, public works, fire, police, and health, it being considered a matter of public duty and honor to serve in these capacities as directors.

68. Board of Education. With the exception of Buffalo, the educational affairs of cities are intrusted to a board of education, either appointed by the mayor or elected as are other city officials by direct vote of the people. The power of the board of education differs in different cities. In some, the board of education has full power over the

amount to be expended for running the schools; in others this power ultimately rests with the common council or board of estimate and apportionment. In general, however, the duties of a board of education in a city are the same as in a village (§ 50). All matters pertaining to the care of buildings, repairs, heating, lighting, courses of study, apparatus, supplies, books, qualifications, and salary of teachers and other school officials are matters wholly within the care of the board of education. It is their duty to see that the provisions of the compulsory school law are observed. Their work, also, extends to a larger variety of schools — truant, training school for teachers, technical schools, etc., not usually found in villages. The board of education appoints a *superintendent of schools*, who becomes the executive officer of the board and is charged with the responsibility of carrying out its rules and regulations. In addition, the superintendent of schools usually determines the course of study, recommends the text-books, supplies and apparatus, makes general suggestions regarding the improvements of the school buildings and grounds, calls attention to the need of new buildings, proper heating and ventilating systems, medical inspection of the children, inquires into, determines the fitness and recommends for appointment candidates for teaching, and performs many other duties looking toward the increased efficiency of the schools.

69. Public Utilities. In cities, as in villages, water, gas, and electric lights are furnished by some central authority (§ 51). It is important that you know whether this service in your city is performed by a private corporation or owned by the city; whether the service is adequate to

the needs, and if not, how it can be made so; the cost of the service as compared with the cost of similar service in other cities; the tendency toward public ownership and the reasons therefor—e.g., the relation of the water supply to health, insurance, value of property, etc.

70. Street Cleaning. One of the important departments of city administration is that of street cleaning, due to its close relation to the health of the city. In congested centers it becomes necessary to wash the streets by flushing them with water from hydrants. The removal of snow from the streets, where this is done as in New York, materially swells the cost, but seems necessary, due to the fact that wheeled vehicles are used the year round, and the danger from floods resulting from blocked gutters and drains. For this work large forces of men are employed. Sometimes these men are required to wear white uniforms. Why is this?

71. Building Laws and Permits: New Problems. On account of the great value of land in cities due to the tendency to crowd into the business sections, it has been found profitable and convenient to build very high buildings, some of them over forty stories high. If these great buildings, holding thousands of people, are improperly constructed they are likely to collapse or become mere traps in case of fire. Or they may not be properly supplied with water and sewer connections, and be so poorly lighted and ventilated as seriously to endanger the public health. To avoid these difficulties the city council and the state legislature have passed building regulations and determined fire districts to which all must conform. Within these districts only fire-proof buildings are constructed.

A person desiring to build within the city limits must obtain a building permit from the proper officer and follow prescribed regulations as to water and sewer connections, lighting and ventilating, plumbing, heating, materials to be used in the construction, and many other important details. Thus the city and the state work in harmony for the protection of the individual. As the city grows it becomes necessary to rid its streets of all poles and other obstructions, such as *overhead wires*, etc., wherever possible, to make the fighting of fire easier. When wires are thus removed they are placed in conduits below the surface of the street. Another perplexing problem is the proper disposal of *garbage*. Formerly this was done by emptying into streams. Now resort is had to chemical processes and burning in order further to protect the public health, by ceasing to pollute the streams. While there are numerous other problems peculiar to cities, these few will suffice to show the difficulties confronting city officials calling for the highest order of ability.

72. Police and Fire Protection. We usually think of the police as officers who try to bring to justice those who have transgressed the law in some way, and this is one of their chief duties. But there is another duty equally important, and that is the prevention of crime. It is the duty of these officers to be about the city looking after our property and our persons before crime has been committed. In congested centers they take charge of traffic. At times it is quite impossible for pedestrians to cross the street without their aid, because of the number of cars and vehicles. A well-organized and well-equipped fire department will make it practically impossible for destruc-

tive fires to occur frequently where there are proper building regulations. Where such a department exists, insurance rates will be comparatively lower and property more valuable. Policemen are always paid for their services, but firemen frequently give their services in the smaller cities, and are paid in the larger. The men engaged in both the police and fire departments frequently are in great danger. We should, therefore, render them all possible aid and encouragement.

73. City Institutions. All cities have a jail or police station; some have more than one. In the larger cities these penal institutions are imposing structures and under present conditions seem to be necessary. In some cities the sick are taken care of to some extent in hospitals at the expense of the city. The poor are helped and the unfortunate assisted in a number of ways. Added to these institutions are those supported by churches and philanthropic bodies. In the more congested districts, playgrounds, recreation piers, roof gardens, and baths are maintained at public and private expense for the care and comfort of children. In some cities free lectures, concerts, and museums are maintained.

74. City Finances. The cost of all this service mentioned in this chapter is frequently very large, and calls for the expenditure of large sums of money. Ascertain what it costs in your city. The sources from which this money comes are principally as follows: from taxes upon real estate and personal property; from special assessments against property improved by a pavement, sewer, etc.; from licenses of various kinds; fines imposed by the courts upon individuals or corporations; fees for the recording

of documents, services, etc.; rental of public property. Assessors are chosen who appraise real estate and personal property (§ 25). This assessment forms the basis for the tax. The city budget is made up from the estimates for administrating the city government, care of its institutions, improvements, etc. The sum to be raised is determined by subtracting the sum of the special taxes, licenses, etc., received from the amount of the budget. The total tax to be raised is therefore less than the budget, which includes the sums received from various sources. The tax rate is determined by dividing the total tax to be raised by the total assessed valuation. Many people conceal their personal property and thus make it difficult for the assessors to estimate correctly its real value. It is well to compare this tax rate with that in other cities and from year to year. A comparison of this rate with the state and federal tax is likely to be misleading unless we remember that the federal tax is indirect — that is, appears as a part of the price of an article and not as a tax — and that the state tax, aside from the canal tax, is received from taxing inheritances, corporations, stock trading, licenses, etc., and not by a direct property tax. However, these methods place the taxes upon the people just as certainly as though they did not go through the present roundabout way, for the ultimate consumer pays all of the bills, whether it be for constructing a railroad, building a battle-ship, or paving a street. Any good business man will verify this part of our work. To ascertain, then, what tax the people are paying, ascertain what the state budget is, and that will be the amount; and the same is true in the federal government just as

much as in the government of your city, village, or town. The state puts a limit upon a city as to the amount of indebtedness it can incur.

75. Commission Government. In recent years, however, a deeper interest is being taken in the management of city affairs, and a new form, known as the "commission plan," is being tried. This plan places the management of the city's affairs in the hands of three or five men, called commissioners. Ward lines are obliterated, and the commissioners chosen to represent the whole city. By nominating the commissioners at direct primaries (a place where the individual voter may express by ballot his choice as to candidate), and by using the "New Zealand ballot" (by printing the names of the candidates alphabetically without designating their political affiliations), partisan politics are eliminated and the business affairs of the city conducted in accordance with well-established business principles. The commissioners are usually chosen for a term which varies from two to six years, and are subject to the *initiative*, *referendum* (see p. 397), and *recall;* that is, if the commissioners do not pass ordinances which the people desire, the people may by ballot instruct them to do so (the initiative); or if the commissioners pass ordinances which the people do not want, the people may by ballot veto such legislation by registering their disapproval (the referendum); or if the official acts of any commissioner are objectionable to the people at any time during his term of office, the people may by ballot dismiss him from office (the recall). Acting together, the commissioners constitute the legislative branch of the city government; acting separately they constitute both the executive and judicial branches. One of their number is chosen mayor and acts as commissioner of

public affairs; one has charge of the police, fire, and health departments, and is called the commissioner of *public safety;* one has charge of the public buildings, streets, bridges, sidewalks, parks, and other public works, and is called the commissioner of *public works;* one has charge of the city's finances—taxes, licenses, and revenue from other sources—and is called the commissioner of *finance;* one has charge of all of the city's legal business, including its courts both civil and criminal, and is called the commissioner of *justice.* Sometimes this department of justice is delegated to a bureau, and the department of public works divided into two departments: the one dealing with work of a permanent nature, such as the laying out of a new street; the other with that of maintenance, such as keeping the street clean. Each of the above departments is divided into a number of bureaus charged with the detailed administration of affairs, but directly responsible to the commissioner in charge of the department. All necessary assistants are appointed by the commissioners and may be removed by them. Contracts for the erection of public buildings, street paving, sewers, drains, park and other city improvements, and the granting of franchises are entirely in the hands of the commissioners, limited only by the city charter, the initiative, referendum, and recall. As yet no uniform plan for commission government has become standardized, and changes are being rapidly made. However, *no scheme is stronger or better than the men who administer it, supported by public opinion.*

	Number	How chosen	Term	Main duties
LEGISLATIVE BRANCH:				
Common Council or Board of Aldermen	2 from each ward	Elected by wards	2 years	To levy taxes; borrow money; fix salaries; appropriate money; enact ordinances and grant franchises and licenses.
President of Council (or board) (All cities do not have this office.)	1	Elected by city	"	To preside over council. (*To act as mayor in case of death, disability, or absence.*)
EXECUTIVE BRANCH:				
Mayor	1	" "	"	To see that the laws and ordinances are enforced; appoint certain officers; send statement of city affairs to council; command police and firemen and approve or veto legislation.
Assessor or Board of Assessors	1 or 3	Elected by city or app. by mayor	"	To value taxable property and determine each person's tax.
City Treasurer[1]	1	ditto	"	To receive and pay out city moneys and report to council.
City Clerk	1	App't'd by mayor	"	To keep city records and act as clerk to the council.
Collector[1]	1	" "	"	Collect city, school, state, and county taxes on city property.
City Attorney or corporation counsel	1 or 2	" "	"	To prosecute and defend actions and advise other city officers.
Administrative departments (Composed of one commissioner or a board of several.)		" "	2–5 yrs.	Each department has supervision of a particular branch of the city's business, such as *education, public works, health, fire, police, charities*, etc. Among these should be classed the municipal *civil service commission*.
JUDICIAL BRANCH:				
City Judge or Judges (Including police justices.)	1 or several	Elected by the city usually	6 years	To try minor criminal and civil actions.

[1] In some cities these two offices are joined into one, the officer elected is called a chamberlain.

QUESTIONS ON THE TEXT

1. In what general features are cities like villages?

2. Why are large cities usually located on some navigable body of water, or at some great water-power, or near some mineral deposit?

3. Why is the street such an important feature of city life?

4. What is "eminent domain"? How are new streets in a city laid out?

5. For what may streets be properly used? How may individuals obtain the use of the streets for private gain?

6. What is the argument for granting limited franchises?

7. Define "condemnation proceedings," "franchise," "public utilities."

8. If a private corporation is given permission to lay gas mains through the streets, this carries with it the right to tear up the streets to repair those mains even to the blocking of traffic. Is this any reason why such corporations should pay a certain percentage of their gross earnings into the city's treasury in addition to their regular property tax? Discuss fully the principle involved.

9. Mention the principal departments of city government which have to do with the administration of a city's business.

10. What is the source of a city's authority? How is it obtained?

11. What becomes of the town or county government when they are wholly included within the city's boundaries?

12. By granting a charter to cities, does the state lose its control over city affairs?

13. May the state change a city's charter without the city's consent? Explain fully.

14. How are cities classified? To which class does your city belong?

15. What advantages is there in holding city elections separate from state and federal elections?

16. Compare the business of a city with that of a department store, and show their points of similarity and difference. In the administration of city affairs are the same qualities needed in officials as in the heads of departments in any great business?

17. Why is it so difficult to get men of great business and executive ability to become candidates for office?

18. Who is the chief executive of a city? What legislative powers has he?

CHAPTER VI

GREATER NEW YORK

76. General Statement. In general, New York City is the same as other cities of the state. Because of its great size, having within its boundaries the four counties of Kings, Queens, New York, and Richmond, one-half of the entire population of the state, it seems well to consider it briefly, pointing out wherein it differs in its organization from other cities. The legislature of 1897 granted New York a new charter, uniting several cities and villages which already had charters into one great city. This act cancelled all of the charters of the villages and cities within the boundaries of the greater city of New York thus created; it also placed large areas of common farm lands within the four counties above named within the city limits. The charter provided for the three-fold division of the city government characteristic of all forms of American government; namely, legislative, executive, and judicial. The state legislature has the same authority over the city of New York that it has over other cities, protecting the rights of its citizens in the same manner.

77. New York Legislative Department: its Board of Aldermen. The board of aldermen constitutes New York's chief legislative body. In matters of detail it shares its legislative authority with the board of education in matters pertaining to the schools, with the board of estimate and apportionment in matters pertaining to franchises for the

use of the streets and other public property, with the board of health in matters pertaining to the general health regulations of the city, and with the park commissioners in matters pertaining to the public parks. The city is divided into seventy-three districts, and each district elects one member to the board of aldermen. The president of the board of aldermen is elected by the voters of the entire city at the time and for the same term that the mayor is elected. Each of the five boroughs elects a president by the voters of the entire borough. These five borough presidents, the seventy-three aldermen, and the president of the board constitute the board of aldermen. The term for which aldermen are chosen is two years, and the salary is $2000 per year. The board appoints a clerk, who is also city clerk, for a term of six years at a salary of $7000 per year. The president of the board of aldermen receives a salary of $5000 per year, and is acting mayor of the city during the absence or disability of the mayor. For the purposes of doing business, a majority of the board constitutes a quorum. The board holds at least one meeting per month, and has its place of meeting in the borough of Manhattan. Questions involving the expenditure of large sums of public money or making specific public improvements require a unanimous vote of the board, while a majority is sufficient to settle other matters. Upon any question named in the city charter, the board may pass ordinances. Some of these questions are: the establishment and regulation of public markets, parks, streets, boulevards, bridges, docks, waterworks, school houses, and other public buildings of the city; for the inspection and sealing of weights and measures; the inspection, weighing,

and measuring of coal, wood, hay, etc.; for the numbering of houses and lots; for regulating public cries, advertising noises, steam whistles, etc.; regulating the use of guns, pistols, fireworks, etc.; regulating places of public amusement, the construction and use of hydrants, cisterns, sewers, pumps, etc.; regulating partition walls and fences, for licensing truckmen, hackmen, expressmen, pawnbrokers, and others; for the suppression of vice and immorality, and the prohibition of gambling houses. The board may also restrict the height of buildings, change ward boundaries; and it may, on recommendation of the board of estimate and apportionment, fix generally the salary or compensation of any officer or person paid out of the city treasury, except day laborers, teachers, examiners, and members of the supervising staff of the department of education. It may reduce salaries recommended by the board of estimate and apportionment, subject, however, to the veto power of the mayor. The board may, within the limits fixed by state law, authorize the city to issue its bonds for needed public improvements.

78. New York's Executive. The chief executive officer of New York as in other cities is the *mayor*, who is chosen for a term of four years by the voters of the entire city, and receives a salary of $15,000. Like the aldermen, he is chosen in the odd numbered years, in order to separate city affairs from federal and state politics. The mayor may be removed from office by the governor. The mayor may remove any city official holding office by his appointment unless such removal is provided for by the state constitution. The mayor has legislative power in that he may recommend measures to the board of aldermen, and has

veto power over its acts. To pass an ordinance over the mayor's veto requires a two-thirds' vote of the board of aldermen within fifteen days after receiving notice of the veto and action must be deferred until after ten days have passed. If the ordinance has to do with the expenditure of public money, the creation of debt, or the laying of an assessment, then a three-fourths vote is necessary to pass the measure over the mayor's veto. In matters of granting a franchise, the mayor's veto is absolute. The *other executive officers* of the city are the heads of the different departments of finance, law, police, water supply, street cleaning, parks, bridges, gas and electricity, charities, docks and ferries, fire, correction, education, tenement house, health and taxes and assessments. The heads of these departments are appointed by the mayor, with the exception of the heads of the departments of education and finance.

79. Executive Departments. The department of *finance* is headed by the comptroller, who is elected by the voters of the entire city at the general city election. He is chosen for a term of four years, and receives a salary of $15,000 per year. The comptroller's duties are similar to those of the chamberlain in other cities. He has charge of the financial affairs of the city — collects the taxes, rents, interests, and other moneys due the city, audits city accounts, collects arrearages, receives and pays out all moneys due the city. For the administration of these duties his department is divided into bureaus. The comptroller also causes investigations to be made of the expenditures of city funds in the different departments and causes statistics to be prepared through a bureau charged with these duties. The mayor appoints the *city chamberlain*

at a salary of $12,000 per year, and this official also acts as treasurer of New York county. The *board of estimate and apportionment* is made up of the mayor, comptroller, president of the board of aldermen, and the five borough presidents. This board is charged with the responsibility of making up the city budget,[1] or statement based upon estimates for the expenses of the city for one year. Before the budget can become law, it must be passed by the board of aldermen the same as any other ordinance, and is subject to the same action on the part of the mayor. The board of estimate and apportionment has authority by a three-fourths vote to grant franchises to private corporations to use the streets, parks, wharves, or other public property of the city, subject to the mayor's veto. Upon all questions before this board the mayor, the president of the board of aldermen, and the comptroller each have three votes, the presidents of the boroughs of Brooklyn and Manhattan two votes each, and the remaining borough presidents one vote each. Thus it will be seen that out of the sixteen votes of the board the mayor, the president of the board of aldermen, and the comptroller cast nine, and, therefore, control the board. The *corporation council* is the head of the law department. He is appointed by the mayor at a salary of $15,000 per year. He is the legal adviser of all city officials, and has charge of all questions of law involving the city's business in all of its various departments. New York has a large number of policemen, whose duty it is to prevent as well as to aid in the punishment of crime. The *police commissioner* is the head of this department, and he is also chief of police. He is

[1] The budget for 1911 amounted to nearly $174,000,000.

appointed by the mayor for five years at a salary of $7500. He is charged with the responsibility of maintaining the peace and security of the city. He appoints four deputies, a chief inspector, sixteen assistant inspectors, and thousands of policemen. The general administration of affairs in each borough is looked after by the *borough president*, who is elected by the voters of the entire borough for a term of four years. His salary in the boroughs of Brooklyn and Manhattan is $7500 per year, and in the other three boroughs it is $5000 per year. He has charge of the construction and laying out of new streets, of new surface railroads, fencing and filling in of vacant lots, the removal of encumbrances, bridges, sewers, tunnels, streets and public buildings, within his borough, excepting school buildings, almshouses, fire and police stations, and penitentiaries. The mayor appoints forty-six members of the *board of education*. This board has full authority in matters of education. It appoints a superintendent of schools, eight associates, twenty-six district superintendents, has charge of all school property, with full powers and duties as in other cities.

80. County Government within the City. When a city includes a town,[1] town government ceases. This is not the case when a city includes one or more counties. In such cases there is a separate county government independent of the city government. Since town governments within a city cease, there can be no board of supervisors, and, therefore, no county legislature. The work of the board of supervisors is, consequently, performed by the city government. But each city-county elects its own

[1] The city of Rome and the town of Rome have the same boundaries.

sheriff, clerk, district attorney, judge, and other county officers. These officers are chosen as in other counties, with the same duties (see Chapter VII).

81. New York's Judicial System. Corresponding to the justice court in a town, we have two courts in Greater New York — the municipal court of the city of New York and the magistrates' court. The *municipal court* tries civil cases at law involving property where the amounts do not exceed $500. To facilitate the work of this court the city is divided into twenty-four districts as follows: Brooklyn, seven; Manhattan, nine; Bronx, two; Richmond, two; and Queens, four. In each district in one or more parts this court holds sessions. Each court thus held is presided over by a justice elected for a term of ten years by the voters of his district at a salary of $8000 per year, excepting in Queens and Richmond, where it is $7000. The *city magistrates' court* tries petty criminal cases. To facilitate the work of this court the city is divided into two divisions, Manhattan and the Bronx forming one and the remaining boroughs forming the other. The mayor appoints for each division a chief magistrate and sixteen assistant magistrates for a term of ten years at a salary of $7000 per year, excepting in Brooklyn, where the salary is $6000, and in Richmond and Queens, where it is $5000 per year. The magistrates meet and pass regulations; the chief magistrate determines the number of courts to be held, the hours for holding the courts, etc., for the division. Single magistrates may hold court, and special night courts and courts for the trial of cases arising under the laws governing the relation of husband and wife, parent and child, etc., are also held.

Both of these courts are parts of the state system of courts, and try offenders against the laws of the state as well as violators of city ordinances. Corresponding to the police court in other cities is the court of *special sessions*, consisting of a chief justice and fourteen associate justices appointed by the mayor for a term of ten years, at a salary of $9000 per year, excepting in the boroughs of Richmond, Queens, and Brooklyn, where the salary is $6000. This court tries cases of misdemeanors committed in the city where the matter has not been considered by the grand jury. The chief justice designates the divisions of the court. Three justices sitting together constitute one of these divisions and two of them must concur in a decision. In each county one justice holds a children's court. The *city court* and the court of *general sessions* take the place of the regular county court in New York county. There are ten judges of the city court, chosen for a term of ten years, and seven in the court of general sessions, chosen for a term of fourteen years by the voters of the county. The salary of the former judges is $12,000 per year, and of the latter $15,000. The city court has jurisdiction over civil suits where the amount in question does not exceed $2000. Either party to a suit may appeal to the appellate division of the state supreme court. The court of general sessions has jurisdiction of all cases of crime committed within the county of New York against the laws of the state, including the crime of murder. Cases are brought before this court upon indictment presented by the grand jury. Both courts are courts of record. In Kings, Richmond, and Queens counties a regular *county court* and *surrogate's court* are held, with powers and duties similar to

such courts in the other counties of the state (see chapter on the state judiciary). These judges are elected by the voters of their respective counties. There are two county judges in Kings county, and two surrogates in New York county. The first and second judicial departments of the state are included within the boundaries of Greater New

SUMMARY RELATING TO THE OFFICERS OF GREATER NEW YORK

Officers	How chosen	Term of office	Salary
Mayor	Elected by people	4 years	$15,000
Comptroller	Elected by people.	4 years	15,000
Chamberlain	Appointed by Mayor	Pleasure of Mayor	12,000
Corporation counsel	Appointed by Mayor	Pleasure of Mayor	15,000
Police commissioner	Appointed by Mayor	5 years	7,500
Borough Presidents	El. by people of bor.	4 years	5,000 to 7,500
Com. of water supply, gas and elect'y	Appointed by Mayor	Pleasure of Mayor	7,500
Com. street cleaning	Appointed by Mayor	Pleasure of Mayor	7,500
Com. of bridges	Appointed by Mayor	Pleasure of Mayor	7,500
Com's. of parks	Appointed by Mayor	Pleasure of Mayor	5,000
Com. of Pub. charities	Appointed by Mayor	Pleasure of Mayor	7,500
Com. of correction	Appointed by Mayor	Pleasure of Mayor	7,500
Fire commissioner	Appointed by Mayor	Pleasure of Mayor	7,500
Com. of docks	Appointed by Mayor	Pleasure of Mayor	7,500
Pres. B'd Taxes and Ass.	Appointed by Mayor	Pleasure of Mayor	8,000
Members B'd education	Appointed by Mayor	5 years	None
Com. of health	Appointed by Mayor	Pleasure of Mayor	7,500
Tenement house com.	Appointed by Mayor		7,500
Judges court gen. ses.	Elected by people	14 years	15,000
Judges city court	Elected by people.	10 years	12,000
Judges municipal court	Elected by people	10 years	8,000[1]
Judges court Sp. Ses..	Appointed by Mayor	10 years	9,000[2]
City magistrates	Appointed by Mayor	10 years	7,000[3]
Aldermen	Elected by people	2 years	2,000
City Clerk	Appointed by Board of Aldermen	6 years	7,000

[1] In the boroughs of Richmond and Queens the salary is $7000.
[2] In the boroughs of Richmond, Queens, and Brooklyn the salary is $6000.
[3] In the boroughs of Richmond and Queens $5000 and Brooklyn $6000.

York. The first department and the first judicial district of the *supreme court* of the state are included within the boundaries of New York county; the second department and the second judicial district are included in the counties of Kings, Queens, and Richmond. This court and its appellate division has the same jurisdiction over

the city as does the supreme court over cases arising in other parts of the state (see chapter on the state judiciary). New York's system of courts includes, also, two *inferior courts*, with jurisdiction extending over the entire city, authorized to try cases without the aid of a jury. These are made up of the municipal court and the court of special sessions. These are not courts of record. Is the right of trial by jury violated by these courts? (Art. I, sect. 2, p. i.)

QUESTIONS ON THE TEXT

1. What became of the municipal corporations which formerly existed in the territory now known as the Greater City of New York?

2. What officers are elected by the voters of the entire city of New York at the same time as the mayor is chosen? Mention the chief duties of each.

3. Why is it well to choose city officials at times other than the dates of federal and state elections?

4. What advantage is there in having the elective city officials chosen for double the length of term of aldermen?

5. In case of neglect of duty, by whom may the mayor be removed?

6. In what manner does the state legislature exercise control over the affairs of the city of New York?

7. Over what actions of the board of aldermen does the mayor have absolute veto? Over what actions does the mayor exercise the absolute veto unless the board repasses the measure with a two-thirds vote? A three-fourths vote?

8. What three officers actually control the board of estimate and apportionment? How are these officers chosen? What is their length of term and annual salary?

9. What are the duties of the borough presidents? How are they chosen? Of what important boards are they members?

10. Mention the principal executive departments. How are the heads of these administrative departments chosen? How may they be removed?

11. How may a private corporation obtain permission to use the streets for the laying of gas mains or other public utilities? Is this method the same in New York as in other cities of the state?

12. How is the city budget made up? Distinguish between the budget and the total tax to be raised by property assessment.

13. What is the lowest court in New York city that tries civil suits at law? that tries petty criminal cases?

14. What court would have jurisdiction in a murder trial in New York city? What court would have jurisdiction in a civil suit where the sum involved did not exceed $2000?

15. What courts in other parts of the state would have jurisdiction of the cases mentioned in question No. 14?

16. Cases from the courts mentioned in question No. 14 might be appealed to what courts?

17. How are the judges of the various city courts chosen?

18. Why have separate children's courts? night courts?

19. How does county government in city-counties differ from that in other counties?

20. Give five subjects concerning which the board of aldermen may pass ordinances.

TOPICS FOR DISCUSSION

Resolved: That it is for the best interests of the public that public utilities — including sewer, drainage, and water systems; street railways and electric light and gas plants — be owned and operated by the public served; or *Resolved:* that the above and like public utilities will be better managed, and the public better served, under private ownership or control.

Resolved: That the business affairs of all cities and incorporated villages be administered by five independent commissioners (safety-police and fire, justice, finance, health, and public works), directly responsible to the people.

Resolved: That in all cities and incorporated villages there shall be established "juvenile courts," in which children under sixteen years of age shall have a hearing, said courts not to be "courts of record" (see p. 128).

CHAPTER VII

THE COUNTY

82. General Statement. The state is divided into sixty-one governmental units called counties, for the administration of state law pertaining to the people residing within each county respectively. County government, unlike city government, is the same in all counties not identical in boundaries with the boundaries of a city. In the administration of law, the county government bears an important part, a service that is quite distinct from that performed by any other department of our state or local government. Many cases of law are carried from justice (town) and city courts to the county court; the recording of deeds and mortgages, the probate of wills, are services performed by county officials; the principal roads and bridges outside of large cities are under county control; the county is also responsible for the preservation of order. The county was, like the town, brought to this country by our forefathers. It first appeared in Virginia and was widely used in the Southern colonies as being more adapted to the government of a widely scattered population.

83. City Counties. City counties are those whose boundaries are identical with the boundaries of cities as set forth in city charters. The Greater City of New York contains four counties — New York, Kings, Queens, and Richmond. In such cases, city and county governments coincide in part. For example, there is no county legislature since there are no towns, but the people elect a sheriff, county clerk, and

district attorney as in other counties. These officials have to do with the administration of justice, thereby reducing the county thus situated to a judicial division of the state as in Greater New York.

84. County Government. Otherwise than above stated, we find the county government, like the federal and state governments, divided into legislative, executive, and judicial branches, which we will now consider separately.

85. County Legislature. The county legislature is the board of supervisors. This board is made up of one supervisor elected from each town at the biennial town meeting, and one from each ward in those cities whose boundaries are less than those of a county. These supervisors represent their towns or wards in the county board of supervisors or legislature the same as assemblymen represent their districts in the state legislature. At the annual meeting, the board chooses one of its number as chairman and appoints a clerk who is not a member of the board. The board of supervisors is, therefore, made up of representatives from smaller political units, and the government of the county is representative. The chairman of the board appoints standing committees to facilitate business, much as the speaker in the house of representatives does, or the speaker in the state legislature.

86. Board of Supervisors: its Duties. The constitution of the state provides that the legislature may increase the powers of local legislation of the board of supervisors as it deems expedient (Art. III, sect. 27). The present powers of the board of supervisors may be briefly summarized as follows: (1) the care of county property — courthouses, jails, poorhouse and farm, etc.; (2) deter-

mine the county budget and levy a tax to meet the same, including the county's share of the state tax and any expenditures for town work; (3) audit all bills and accounts against the county; (4) make appropriations of money for various county purposes and as above mentioned; (5) fix the salaries of county officers; (6) borrow money on the credit of the county not to exceed the limit set by state law; (7) divide the county into school-supervisory districts and into assembly districts; (8) make contracts for and in the name of the county for the care of the county poor, etc.; (9) make regulations relative to weeds, fish, game, and animals; (10) prepare each year a list of three hundred men to serve as grand jurors who serve for one year; (11) appoint a county superintendent of highways and remove him for failing to do his duty; and (12) to canvass the votes in the county after each general election and announce officially the results of the election. In this capacity the board is known as the "county board of canvassers." Members of the board of supervisors serve for a term of two years and receive four dollars per day for actual service as county officers.

87. County Executive: Removals. The executive department of the county is represented by the sheriff, clerk, treasurer, attorney, superintendent of the poor, superintendent of highways, and superintendents of schools — one or more, appointed by district board of school directors. County officers may be removed by the governor for cause, excepting district superintendents of schools (see § 94).

88. Sheriff. The sheriff is the chief executive officer of the county. It is his duty to preserve the peace of the county, by the prevention of crime and the arrest of criminals.

He has charge of the county jail and the prisoners lodged there. He serves court orders. To suppress riot he may call out all the able-bodied men of the county. This body is called the *posse comitatus*. If he is then unable to restore order, he may ask the governor for aid. He is responsible for the enforcement of state law within the county and local regulations passed by the board of supervisors. He assists the county clerk in the selection of jurors; attends the courts of record held in the county; preserves order; conducts public sales of property ordered by the courts to be sold for the payment of debts in execution of judgments. For the carrying out of these duties, he may appoint an under sheriff and a number of deputy sheriffs. The sheriff is elected at the general election for a term of three years by direct vote of the whole county. Because of his great power, the state constitution forbids his succeeding himself in office. In some counties he is paid a salary, in others partially by fees, in others wholly by fees. The tendency, however, is to pay a salary, and the fees collected are turned over to the county treasurer. The executive head of the county government differs from the federal and state executive in that he has no veto power over the county legislature as the other two have over the federal and state legislatures.

89. County Clerk. The county clerk is the custodian of the county records. He records deeds, mortgages, wills, and other documents affecting the title to real estate, and files judgments of the courts and other papers subject to public reference. In some counties, however, there is a separate officer, called a "registrar," for recording deeds and mortgages. The county clerk is clerk of the county

court and of the supreme court when it holds a term in his county; he draws from the proper lists the grand and petit (trial) jurors when this duty is not performed by a special officer called "commissioner of jurors." He is elected for a term of three years and is paid by fees in some counties and in others by a salary. If paid a salary, the fees are turned over to the county treasurer. The tendency is toward a definite salary.

90. County Treasurer. The county treasurer receives all moneys collected in the towns and wards of the county for state and county and pays out the county's money as directed by the board of supervisors. He also receives the state school money belonging to the county and pays over the amount belonging to each town to the supervisor and to the chamberlain of the city or to the treasurer of the board of education the amount belonging to each city. Money paid into court is received by him and paid out as the court orders. He issues liquor licenses upon the payment of fees fixed by state law, and collects the inheritance tax. He is elected for a term of three years, and is sometimes paid a certain percentage of the moneys which he receives; generally, however, he receives a salary.

91. District Attorney. The district attorney is primarily a state officer in that he is the state's attorney in criminal cases. He brings criminal offences to the attention of the grand jury and prosecutes those accused of crime in the county or supreme court. He acts as the legal adviser of the board of supervisors, in which capacity he is a county officer. He is elected for three years and is paid a salary fixed by the board of supervisors.

92. Superintendent of the Poor. It is the duty of the

superintendent of the poor to look after the poor of the county. He manages the poorhouse and farm and aids the destitute. He expends the funds voted by the board of supervisors for the care of the poor, and reports concerning such expenditures to said board. He makes an annual report to the state board of charities, and furnishes the board of supervisors with a statement of the charges against the different towns for the maintenance of their poor while a county charge. He may be appointed by the board of supervisors, but is usually elected at the general election for a term of three years at a salary fixed by said board.

93. Superintendent of Highways. The superintendent of highways is appointed by the board of supervisors for a term of four years. His salary is fixed by the board of supervisors. For neglect of duty, the board of supervisors may remove him from office, or he may be removed by the state commissioners of highways. The county superintendent of highways has general charge of the highways and bridges, building and repairing of the same, approves plans for new work, approves gravel deposits and stone used in road construction, inspects roads and bridges, causes grades to be established for drainage, reports to the state commission annually, etc.

94. District Superintendent of Schools. In each town two school directors are chosen whose duty it is to elect a district superintendent of schools for a term of five years. He is paid a salary of $1200 by the state and allowed $300 for expenses. The supervisors of the towns forming a district may vote to increase this salary, in which case the sum voted is added to the taxes of the towns composing the district. The district superintendent is essentially a

state officer, and may be removed by the commissioner of education for failure to do his duty (see § 34).

95. Judicial Branch. The judicial business of the county (except New York[1] county) is intrusted to the county judge. In counties having a population of over 40,000, a surrogate is chosen in addition. Both officers are elected for a term of six years by all the voters of the county. They are paid a salary which varies in different counties. All ordinary offences against persons and property (save murder) may be tried in a county court. For their further duties, see the chapter on the state judiciary. Vacancies in either court may be filled by the governor making an appointment, which appointment must be approved by the senate if in session.

96. Coroners. Each county, as a rule, elects four coroners; that is, officers whose duty it is to investigate the causes of sudden and suspicious deaths. If requested, a coroner must investigate the cause of any fire which seems to be of an incendiary origin. To make his work effective, the coroner may summon any person to appear before him as a witness whom he thinks may have knowledge of the matter. The witness in a coroner's court is put under oath and examined as in any court. A coroner's investigation is sometimes referred to as an inquest. Usually the coroner is a physician. Would you think this an advantage?

97. County Government in Action. How may this machinery be set in motion? Suppose we take a case at law. A person burns a barn (commits arson). He has violated a state law. The man whose barn is burned swears out a warrant before a justice of the peace. The

[1] See chapter on Greater New York.

"warrant" is an order issued by the justice directing the sheriff or a constable to arrest the man named in the warrant as committing the offence to come with the officer to his court. If the evidence submitted to the justice is not sufficient, he will dismiss the case; if it is, he will hold the prisoner until the next meeting of the grand jury. He may either send the prisoner to jail or fix bail. Bail is a sum of money to be paid by those who sign the bail papers in case the prisoner fails to appear when wanted in court. In the meantime, the district attorney carefully looks into the case, inquires of all persons whom he thinks may know something about the matter. These he summons before the grand jury as witnesses. If the jury thinks the evidence thus submitted is sufficient, it will order the case to trial; that is, find an "indictment." The case is then tried by the county judge, the district attorney representing the interests of the people, the accused having an attorney to see that he has a fair and impartial trial. A different jury, called a petit or trial jury, of twelve men, hear the case; that is, hear what is said by witnesses on both sides. The judge tells the jury what the points of law are bearing upon the case, and the jury decides whether the prisoner is guilty according to the evidence. If they think he is not guilty, they so report to the court, and the prisoner is dismissed. If they think he is guilty, the court then pronounces sentence; that is, tells the prisoner for how long he has to go to prison in the case of a crime like arson, or what fine he has to pay if it is a civil (property) case. No matter whether we have a deed to record, a will to prove, or a judgment of the court to execute, there is a prescribed way that each and all must be done. This is a

	Number	How chosen	Term	Compensation	Main Duties
LEGISLATIVE BRANCH:					
Board of Supervisors	1 from each town and ward	Elected	2 years	$4 per diem	To levy taxes; appropriate money; fix salaries; make grand jury list; care of county property; divide the county into school-sup'rs dist.; appoint county supt. of highways; act as *county board of canvassers.*
EXECUTIVE BRANCH:					
Sheriff	1	"	3 years	Fees or salary	To preserve order; enforce laws; execute judicial orders; appoint *under-sheriff* and *deputy sheriffs.* Cannot succeed himself.
County Clerk	1	"	"	" "	To keep the public records; act as clerk of the supreme and county courts.
County Treasurer	1	"	"	Salary or percentage	To receive and pay out county moneys; grant liquor licenses and collect fees.
District Attorney	1	"	"	Salary	To prosecute criminal cases; to advise board of supervisors.
Superintendent of the Poor	1-3	Elected or app. by sup'rs	"	"	To have charge of poorhouse and inmates.
Superintendent of Highways[1]	1	App. by board of sup'rs	4 years	Salary fixed by board of supervisors	Charge of county system of roads and bridges; building and repairing same; drainage; gravel pits; approves plans for new work, etc.
District Superintendent of Schools[2]	1-8	App. by town school directors of his district	5 years	$1500	Supervises the schools of his district, advises with teachers and trustees as to buildings, course of study, management, dist. boundaries, etc.
JUDICIAL BRANCH:					
County Judge[3]	1	Elected	6 years	Salary	To try criminal and civil actions (when less than $2000 involved).
Surrogate[4]	1	"	"	"	To settle estates of deceased persons; to have charge of minors and their property.
Coroners	4	"	3 years	Fees or salary	To investigate causes of sudden deaths.

[1] The county superintendent of highways may be appointed by the state commissioners or removed by them as well as by the board of supervisors.

[2] The district superintendent of schools may be removed by the state commissioner of education.

[3] Kings county has two county judges. In counties of less than 40,000 inhabitants the county judge performs the duties of surrogate.

[4] New York county has two surrogates with terms of 14 years each.

The governor may remove many county officials and fill vacancies.

country of law, and since our laws have been made by ourselves through our representatives for our own good, all should respect and obey them. For further discussion of law, see Chapter XII on the state judiciary and Chapter XXIV on the federal judiciary.

QUESTIONS ON THE TEXT

1. What officer is charged with preserving the peace and order of the county?

2. Show how the government of a city-county differs from that of an ordinary county. What are city-counties?

3. Into how many counties is the state divided? What is the purpose of this division?

4. Is the political division known as county original in this country? Explain.

5. In what respects is county government similar to federal and state government? Define indictment, bail, warrant.

6. Mention the officers which constitute each branch of the county government, giving two duties of each official.

7. How is the county tax rate determined?

8. In what respects does the county executive differ from the state executive? In what respects is it similar?

9. Who has the power to remove county officials who fail to perform their duties? State duties of coroner? surrogate?

10. What are the duties of the district superintendent of schools? How is he chosen? Who has the power to remove him from office?

11. How is the county superintendent of highways appointed? Who has the power of removing him from office and filling vacancies? To what officer should you report a mysterious death?

12. Name the duties of the county board of canvassers.

13. What steps would be necessary and what officer would perform the recording of a deed or mortgage?

14. State the difference between the duties of grand and petit jurors. Give number in each. Why called "grand" jury?

15. What county officer is denied by the state constitution the privilege of succeeding himself?

16. When is the district attorney a state officer? When a county officer?

PART II. GOVERNMENT OF THE STATE

CHAPTER VIII

THE CONSTITUTION IN DEVELOPMENT

98. Our Birthright. The boys and girls of the Empire State may justly be proud of their birthright. In all the country's history New York state has borne an important part. In the war for independence it fell to the lot of this state to have the pivotal battle fought upon its soil. Creasy says that the battle of Saratoga was one of the fifteen battles that have changed the destiny of the world. In this war New York state furnished 43,645[1] men, standing second only to Massachusetts in the number furnished; and during the civil war it sent, for the defence of the union, 448,850 men, a far larger number than was furnished by any other state — an immense army in itself. At Gettysburg, the pivotal battle of the civil war, "more than one-fourth of the Union army marched there under the flag of the state of New York; more than one-fourth of those who fell there followed those colors to their graves"[2] — a record which removes from the field of debate that in the hearts of the people of the state patriotism, love of country, and an unselfish desire to serve it even unto death, is the first duty of the citizen and the mainspring of all good government. Not only historically, however, is New York state great. Its vast wealth,

[1] Roberts, J. A., *New York in the Revolution*, pp. 7–15.
[2] *New York at Gettysburg*, Vol. I, p. 7. Albany, 1902.

great natural resources, diversified industries, and dense population (9,113,279 in 1910) make it unquestionably the most important state in the union. In point of population it outranks the Netherlands, European Turkey, Portugal, Sweden, Belgium, Switzerland, Denmark, Canada, and a majority of the South American republics. In 1909

MAP SHOWING THE THIRTY-SEVEN CONGRESSIONAL DISTRICTS
(Changed to forty-three by act of congress, 1911)

it expended upon public education the enormous sum of $53,962,883.41. New York city is the financial, commercial, literary, and art center as well as the largest city of the western hemisphere; while among the great cities of the world, it is second only to London.

99. Before the White Man Came. When in 1524 Verrazano explored what is now known as New York bay, he

found the islands of the bay and the shores of the mainland occupied by the Algonquin Indians. In 1609, when Henry Hudson sailed up the river which now bears his name, he found its shores also possessed by the Algonquins. The rest of the territory now known as New York state was possessed by the tribes of the Iroquois League or "Five Nations." These powerful Indian tribes, banded together in two organizations, figure largely in the history of the state. Of the two, the Iroquois are of more importance than the Algonquins. The Iroquois, or "Five Nations," included the Mohawks, Oneidas, Onondagas, Cayugas, and Senecas, and were located about the waters which now bear their names. From this region, fertile in soil, abounding in game, with facilities for rapid transportation by means of natural waterways, they were enabled, with only comparatively short carries, to send their war parties down the Ohio to the Mississippi, down the Susquehanna and Delaware rivers to the bays, into the Great Lakes, through the Mohawk river into the Hudson to lakes George and Champlain,—in short, this powerful league, some 17,000 strong, was able to sweep the country with its war parties north and south, east of the Mississippi. Thus New York state was the empire part of the new world long before white men visited its shores.

100. New York a Dutch Colony. Henry Hudson, an English navigator, had been employed by the Dutch East India Company to find a short route to the rich trading fields of Asia. In the spring of 1609, Hudson with a small crew, in the ship called the *Half Moon*, sailed north of Norway and Sweden, but was soon stopped by the ice. Turning westward he finally reached the coast of Maine

and continued south as far as Chesapeake bay; then returning northward, he entered New York bay and sailed up the Hudson river, hoping that he had found the desired passage to Asia. Finding himself unable to proceed more than a little distance above the present site of Albany, however, he returned, disappointed in his main quest, and sailed for home to report to his employers. Encouraged by Hudson's report, a company of Dutch merchants planned several trading expeditions. In 1614 the New Netherlands Company was formed,[1] and was granted a charter which gave it commercial control of that region of country lying "between New France and Virginia." The New Netherlands Company grew into the Dutch West India Company.

101. Dutch West India Company. This company, besides exclusive trading rights, was given power to plant and govern colonies. Through their agent, known as director-general, the company exercised almost absolute control over the affairs of the settlers. When Peter Minuit came over as governor in 1626, a council of five was created to advise with and assist him. Governor Kieft, however, with the knowledge that he alone was held responsible for the government of the province, reduced the number of the council to two, one other person and himself; and as he had two votes to the other member's one, he was practically an autocrat. The other officers of importance were the koopman, or commissary and secretary; and the schout, or sheriff and customs collector. The government was scarcely established, however, before the people began to demand a share in its operations. Kieft was forced to make some concessions, and promised greater privileges,

[1] Wilson, *A History of the American People*, Vol. I, p. 73.

but this promise was not fulfilled until the arrival of Stuyvesant. In 1647 Stuyvesant yielded to the demand for popular representation in so far as to order an election by the people of eighteen of their own number, from whom he was to choose nine as advisers. Since, however, this body met only when called upon, it was but a very slight beginning toward constitutional government. The government of the colony under all of its six directors-general, or governors, was rude and harsh, in spite of the fact that the settlers coming largely from Holland, itself a republic, had liberal notions of political and religious liberty. These notions found expression in concessions wrung from the governors, in the establishment of churches, and in the maintenance of schools. As early as 1633 New Amsterdam had a school teacher,[1] and in 1638 a school tax was levied.

102. New York an English Colony. England based her claim to New Netherlands mainly upon the explorations of the Cabots. In 1664 Charles II of England conveyed to his brother James, the Duke of York, a tract of land which included New Netherlands. The same year an English fleet entered New York bay, and Dutch rule in the colony was practically at an end. From 1664 to 1676 New Netherlands, now named New York, in honor of James, Duke of York, remained an English province, excepting for a brief period of about fifteen months (1673–1674), when it was again under Dutch rule, but was conveyed back to England by treaty at the close of the war with Holland. Though the temporary change of masters in 1664, which

[1] Adam Roelandson, the first school teacher, came to New Netherland in 1633. See p. 12, *History of Education in United States.* — *Dexter.*

was made permanent by treaty in 1674, made the government of the province no less autocratic in form, it brought about a very real change in practice. "The despotism of Kieft and Stuyvesant was continued, only now, instead of the iron clutch, it was the stroke of velvet." When the government was formally organized in 1674, Edmund Andros came out as governor and was assisted by a council of ten. The latter body was not chosen by the colonists; but the appeal for popular representation was too strong to be resisted, and in 1683 Governor Dongan, who had just succeeded Andros, called together the first popular assembly in the colony under English rule.

103. The Charter of Liberties. This body, made up of the governor, his council of ten, and eighteen delegates representing the people, met in October, 1683, and adopted, among other important legislative measures, a "charter of liberties," which was confirmed by the Duke of York. This charter made many important concessions, providing among other things for the meeting of a popular assembly and granting to the representatives of the people the right to lay their own taxes. This liberality soon suffered a check, however, and in 1687,[1] after the accession of the Duke of York to the throne as James II, the assembly was dissolved, not to be reëstablished until after the accession of William and Mary. In 1691 Governor Sloughter was sent out to take charge of the government of the colony. The assembly was reëstablished, and promptly passed acts declaring the rights and privileges of the people and reaffirming the charter of liberties. These acts marked the beginning of a struggle between the assembly and the

[1] Roberts, E. H., Vol. I, p. 193.

colonial governors that ended only with the outbreak of the revolution. On the opening of hostilities New York promptly joined the patriot cause, and on July 9, 1776, the provincial congress formally took the name of representatives of the state of New York.

104. Our Four Constitutions. New York has had four constitutions. She had existed as a state for nearly a year (from July, 1776, to April, 1777) before her first constitution was adopted by the state assembly. This first constitution (the first draft of which is now in the custody of the commissioner of education at Albany), like most of the early state constitutions, was modelled somewhat closely upon that of England. The government consisted of a chief executive, of a legislature made up of two chambers, and of a system of courts. The constitution declared the people to be the only source of political power, and provided for a secret ballot and for complete religious liberty. In 1821 this constitution was thoroughly revised and new provisions were made for new conditions. In 1846 it was again revised and somewhat radical changes were made. Among other things it was provided that many officers heretofore chosen by the legislature or appointed by the governor should be elected by the people. In 1866 a convention was called to revise the constitution of 1846, but the people rejected the work of the convention with the exception of the judiciary article.[1] The constitution of 1846 remained thus almost unchanged until 1894, when a new revision, our present constitution, was made (see appendix). In all of these constitutions the main provisions have been substantially the same.

[1] Roberts, E. H., Vol. II, p. 569.

The tendency, however, has been for the people to retain more power, delegating less and less to the governor and the legislature.

105. Fundamental Law. The constitution of the state is its fundamental law, which, of course, cannot in any way conflict with the constitution, treaties, or laws of the United States (§ 1). Like the federal constitution, the state constitution guarantees personal liberty, personal security, personal property. It also determines the right of suffrage and the time and manner of voting; it creates legislative bodies, and defines their duties and limitations; it creates executive and judicial offices, defines their duties and limits their action; it safeguards state and local credit, cares for public property and institutions, provides for free schools, divides the state into various districts for administrative purposes, and provides for its own amendment. The constitution is established by the people of the state as a chart to guide them in the administration of matters pertaining to the general welfare of the people of the state. It is drafted by representatives chosen by the people at the ballot. These representatives meet in convention and draw up the constitution. The various provisions are debated, amended, and passed in the convention, and finally printed and submitted to the people, who approve or disapprove at the ballot of the work of their representatives.

106. Amendment and Revision. An amendment to the constitution may be proposed in the senate and assembly, and if passed by two successive legislatures, must be submitted to the people for ratification. If it receives a majority vote, the amendment becomes a part of the con-

stitution on the first day of January next following election. At the general election in 1916, and every twenty years thereafter, and at such other times as the legislature may by law direct, the question, "Shall there be a convention to revise the constitution and amend the same?" shall be decided by the voters of the state.

QUESTIONS ON THE TEXT

1. Describe the government of the colony of New York in the period just before the revolution. What important changes were made after separation from the mother country?

2. State two important particulars in which the constitution adopted in 1894 differs from the constitution that preceded it.

3. Mention two important amendments to the constitution passed by the constitutional convention of 1894. Discuss the importance of these measures.

4. How may the constitution of New York be amended? What are the provisions of the constitution for its revision?

5. Mention the chief points of difference between the constitution of the United States and that of the state as to the manner of amendment.

6. Explain why the amendment of the constitution is made more difficult than the repeal of a statute law.

7. Describe the process by which the last revision of the constitution was made. By what authority was this revision finally established?

8. Should an "*Initiative and referendum*" clause be added to the constitution in the next revision? Why? (See p. 397.)

9. If such a clause is added should it apply to all bodies having legislative powers — e.g., boards of supervisors, common councils, etc. — as well as to the state legislature? Why?

10. Mention three provisions of the state constitution. To what law must all state action conform?

CHAPTER IX

POWERS AND LIMITATIONS OF THE STATE

107. State Activities. The regulation of the details of our daily life is largely a matter for the state government. This state regulation can best be seen by a brief survey of the various fields in which the state exercises basal authority. The state is divided up into over ten thousand school districts, organized under the state law to perform a specific duty (§ 7); into nearly one thousand larger divisions, called towns, each charged with larger responsibilities (§ 18); into still larger divisions, called counties, sixty-two in number, with responsibilities greater than the school district or the town (§ 82); with special duties assigned to the village and city governments which it has created, etc. In all of these units of government, the state determines the number, kind, and qualifications of the officers, decides whether they shall be elected or appointed and the appointing power, who may vote for the elective officers, when and how the vote shall be taken, who may vote upon questions involving the expenditure of village and city funds, reserving to itself the right of removing from office many of these same officers. In addition to being primarily responsible for the above, the state reserves to itself the wider field and enacts laws safeguarding personal and property rights, regulates the transfer of inheritances, creates and controls all corporations operating wholly within the state, exercises control

over state banks, trust and insurance companies, common carriers wholly within the state, regulates the sale of liquor, supervises the general health and education, provides for defective, dependent, and delinquent classes, and authorizes the levying of taxes to be used in making the above effective.

Map of New York State showing the Fifty-one State Senatorial Districts

108. Federal and State Bills of Rights Compared. We have glanced briefly at the history of our constitution; let us now examine somewhat more fully into the character of the government provided by it. In the federal constitution the bill of rights was an afterthought added by way of amendment at the demand of several of the states. In the New York state constitution, as in most of the state

constitutions, it stands first, as a matter of primary importance. The bill of rights of the New York state constitution, like that of the federal constitution, seeks to secure to the individual the fundamental civil rights of personal liberty, personal security, and private property; but it goes further and provides in much greater detail the methods by which these rights are to be secured.

109. Personal Liberty. The provisions which secure liberty of person and of thought are very similar to those of the United States constitution. Every citizen is privileged to express his sentiments freely, and, in case he is prosecuted for libel, may be acquitted if he can prove that the facts are as he stated and were published "with good motives and for justifiable ends." Full liberty of conscience is accorded to everyone, although this liberty is not to be made a cloak for practices inconsistent with the peace and welfare of the state. It is expressly provided that no person on the witness stand shall be declared incompetent to testify because of any peculiar ideas he may entertain on religious subjects. The citizens of the state may also assemble peaceably, and, if they choose, petition the government without fear of interference from the authorities.

110. Personal Security, or the right to be secure in person and in reputation, is the subject of many important provisions. In case of arrest for any cause, the accused may claim the privilege of a writ of habeas corpus. Excessive bail and excessive fines are forbidden. With a few exceptions, a person accused of serious crime can be held for trial only on indictment by a grand jury. He is, moreover, entitled to trial by a jury of his peers (equals), and

may have counsel for his defence. In case he is not able to pay counsel, it must be provided for him. He cannot be compelled to witness against himself, and may confront the witnesses brought against him. Witnesses, however, may not be unreasonably detained. If acquitted, he cannot be retried for the same offence; if found guilty, he cannot be fined excessively or be punished in a cruel or unusual manner. In short, no arbitrary proceedings may be employed to deprive a person of his life, liberty, or property, or any privilege he may enjoy as a citizen. The marriage relation is partially protected by a restriction on granting divorces. No divorce can be granted without the parties concerned bringing the matter before the court having jurisdiction; in other words, a divorce can be granted only by a formal judicial proceeding. Finally, in cases of injuries resulting in death, the right to recover damages is never to be abrogated, and the amount recoverable is not to be restricted by law.

111. Private Property. The rights of the state over private property are limited. If it exercises the right of "eminent domain" and takes private property for public use, the owner must be compensated. In cases where such compensation is not to be made by the state, a jury of not less than three men appointed by a court of record must determine the amount of money to be paid for the property taken. Some of the provisions of the constitution dealing with property in lands grew out of conditions existing during colonial times. While the colony was still Dutch, a system of feudal tenures had been established under the patroons, as the great land-holders were called. By the constitution all such feudal tenures are abolished;

and in order to prevent the development of a land-holding aristocracy, which might work mischief similar to that wrought by the patroons, another provision forbids the leasing of agricultural lands, with the reservation of any rent or service, for a longer period than twelve years. The interference of one land-holder with another in the matter of constructing roads and ditches is the subject of two important restrictions. In case a private road is desired, the law provides for the precise manner in which it shall be opened. The need for the road, as well as the amount of damage due the party whose land is involved, must be determined by a jury. The party benefited must, of course, pay any expense involved, as well as compensate his neighbor. Laws of a general character only are to be made in providing for draining lands by ditches. In either case no special law may be passed to suit the convenience of any single individual or group of individuals. The state recognizes the harmfulness of gambling, and has sought to curtail this waste of money and energy by forbidding lotteries or the sale of lottery tickets, pool-selling, book-making, or any other form of gambling.

112. State Debts. In addition to the restrictions in the foregoing paragraphs, the constitution places other restrictions, designed as checks, upon a possible abuse of power by those in authority. These concern especially financial matters. In some of the states the recklessness and improvidence of state legislatures and administrators have created debts that have crippled the state and its citizens for many years. Against such dangers this state has sought to guard itself by a series of constitutional provisions declaring what may and what may not be done in the matter

of creating debts. The state may, of course, contract debts. Contingencies may arise, such as war or invasion, necessitating unforeseen expenditures and making debt inevitable. The constitution carefully specifies, however, the conditions under which debts may be created. The state may contract debt (1) to meet casual deficits or failures in the revenues, and (2) to meet expenses not provided for; but such debts must never exceed $1,000,000 in amount. It may also contract debts for the purpose of repelling invasion, suppressing insurrection, or defending itself in war. If the state contracts a debt for any other purpose, it must carefully observe the following regulations: (1) the debt is not to be contracted unless it be authorized by law for some single work or object specified therein; (2) the state must provide at once for its payment by a law laying a direct annual tax sufficient to pay the interest as it falls due and to cancel the entire obligation within 50 years; (3) not only must the vote on such a measure in the legislature be taken by ayes and noes and be duly recorded on the journal; but (4) the measure must be submitted to the people for action before it can become a law and must receive a majority vote at the polls (a case of referendum). Three months must elapse after the passage of the bill before it is submitted to the people, and no other bill or amendment to the constitution may be submitted at the same time.

113. State Credit. In order to prevent public money from being used to "sanction a vast mass of private enterprises in which public rights and public interests become the sport of speculators," the state is forbidden by the constitution to loan its credit to any private undertaking.

The state, like the individual, refuses to allow any claims against it which have become outlawed by lapse of time.

114. Forests and Canals. Besides these provisions which have to do with its finances, the state is also debarred from making any disposition of its forests and canals. The preservation of the water supply is of such importance that forest lands owned by the state or hereafter to be acquired as part of the forest preserve must be maintained as wild forest lands. They may not be leased, sold, or exchanged, or be taken by any corporation, public or private; nor can the timber growing there be sold, removed, or destroyed. In like manner the state cannot sell, lease, or otherwise dispose of the Erie, Oswego, Champlain, Cayuga, Seneca, or Black river canals; nor can it enforce any tolls on the persons or property which may be transported on them.

115. State Protection. The protection of the state against invasion and domestic violence is secured by making every male citizen between the ages of eighteen and forty-five years residing in the state liable to military duty unless exempted by United States law or by the laws of the state. This body constitutes the militia. Members of local fire departments; local officers such as justices of the peace, county judges, and sheriffs; professional men such as doctors, ministers, teachers, and a few others — are among those exempted by law from military duty. Those mentally or physically incapacitated are also exempted. This force has been partially organized by the legislature. The organized land force is called the *national guard;* the naval force, the *naval militia.* The state must, according to the constitution (Art. XI, sect. 3, p. xlvii), provide for

a force of "not less than 10,000 enlisted men, fully uniformed, armed, equipped, disciplined, and ready for active service." The legislature has by law increased this number to 20,000, of whom 2,000 are naval militia. The governor is commander-in-chief of this force. It is his duty to "appoint the chiefs of the several staff departments, his aides-de-camp, and military secretary," the officers commanding the naval militia, the officers of the signal corps, and, with the advice and consent of the senate, all major-generals. The legislature has provided by law for the appointment of the remaining officers. The national guard is commanded by a major-general; the naval militia by a commodore or captain. The organization of the national guard is left partly to the governor. The law, however, provides that a regiment shall consist of eight to twelve companies, troops, or batteries. All enlisted men must serve at least five years. While on duty they receive a compensation which varies from $1.25 to $2.00 a day. The officers are also paid by the day.

116. Corporations, Banks, etc. The state exercises definite control over corporations for the general benefit of the individual citizen. The term corporation is defined by the constitution as including all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. All corporations except municipal corporations are formed in accordance with general laws, excepting where in the judgment of the legislature the objects cannot be attained under general laws, and are subject to a special tax for the support of the state. Municipal corporations are formed by special act of the legislature. The control

over banks is especially stringent. Banks that issue paper money must register their notes and bills and provide ample security for their redemption in specie. The legislature is forbidden to enact any law authorizing these banks to suspend specie payment. If a bank fails, it must pay the holders of its bills in preference to any of its other creditors. The stockholders are personally liable for debts of the bank in proportion to their amount of stock. Savings banks are not allowed any capital stock, and the trustees are not allowed any interest, direct or indirect, in their profits nor in any loan or use of the money. Thus the people of the state very definitely point out what may and may not be done by their representatives, retaining for themselves the ultimate control of their own affairs.

QUESTIONS ON THE TEXT

1. Give in substance the provision of the constitution in reference to freedom of worship and of religious opinion; in reference to disfranchisement of citizens; to damages for injuries causing death.

2. What is the greatest length of time for which agricultural lands may be leased? Why is this restriction made?

3. Give in substance the provision of the constitution in reference to opening private roads; to contracting debts on the part of the state; to the forest preserve; to tolls on the canals and the manner of providing funds for canal maintenance and improvement; to prison labor; to liability of stockholders of banks.

4. Describe the military system of the state.

5. Mention four classes of persons who are exempt from military duty. Give a reason for such exemption.

6. What is the provision of the constitution regarding the number of the militia that must be ready for active service?

7. Describe the militia of the state touching on (1) persons composing it, (2) duties.

8. State the powers of the governor with reference to the militia. Has the president of the United States authority to call out the state militia? Give a reason for your answer.

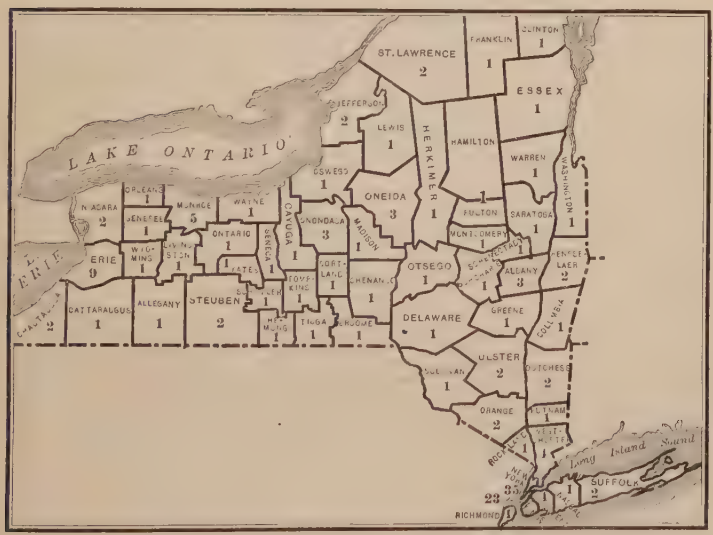
CHAPTER X

LEGISLATIVE DEPARTMENT

117. Organization. The state legislature, like the national legislature, consists of two houses, the senate and the assembly. This division can be traced back to colonial times, when the legislative power was divided between the council and the colonial assembly, but there is now no such reason as exists in the case of the national legislature for its continuation. Both houses of the state legislature are representative of the people in exactly the same way, and the qualifications for membership in both are the same. The term of the senator is, to be sure, longer than that of the assemblyman; but this difference in time is not sufficient to give added weight nor dignity to the upper house. The chief difference lies in the fact that the senator represents a constituency three times as large as does the assemblyman. There is an important advantage in the two-chamber plan, however, in that more time is required for the passage of a bill through the two houses than through one. In this way the public is sometimes able to express its opinion in such a material way as greatly to influence legislation.

118. The Assembly. The number of assemblymen is fixed by the constitution at 150. These are apportioned throughout the state on the basis of population, aliens excluded. At the conclusion of each census, the legislature immediately defines the boundaries of the new

assembly districts; thus at each census the boundaries of the assembly districts may be changed. Each county except Hamilton is entitled to one assemblyman. The number of people represented by an assemblyman is ascertained by dividing the total population entitled to



MAP OF NEW YORK STATE SHOWING THE NUMBER OF ASSEMBLYMEN TO WHICH EACH COUNTY IS ENTITLED, TOTALLING ONE HUNDRED AND FIFTY

representation by 150. If a county contains a population equal to one and one-half times the number represented by an assemblyman, the county is given two members. The remaining members are apportioned among those counties having a population equal to or greater than that represented by two assemblymen. Assemblymen are elected annually by the direct vote of the qualified voters

of the district. The annual salary is $1500. If more than one assemblyman is assigned to a county, the county is divided into assembly districts (see map, p. 99).

119. The Speaker: his Election. The first step in the election of the speaker is the calling of a caucus, or meeting, of all the assemblymen belonging to the political party having a majority of the members elected to the assembly. The purpose of this caucus is to consider who shall be the candidate of the majority party. When a choice is finally made by the caucus, all members of the party feel bound to support the caucus candidate when he shall be placed in nomination before the full assembly. By this method it will be seen that the speaker is actually chosen by a majority of the majority party, and that it is possible for thirty-nine members to determine who shall be the speaker of the assembly. Owing to the great power which the speaker exercises over legislation, it is a question if better results would not be obtained by changing either our method of selection, electing the speaker by popular vote of the whole state, or by eliminating all of his present powers and duties other than those of a presiding officer giving him a vote only in case of a tie.

120. The Speaker: his Powers. As in the house of representatives (see Chapter XXI, pp. 277–279), the speaker of the assembly appoints the standing committees, of which there are thirty-six, the more important being the committee of ways and means, judiciary, cities, railroads, education, taxation, health, banks, insurance, and rules. There are three sources of the speaker's power, and these give him practical control over legislation. These are (1) his power to appoint committees which are made

up of a majority selected from his own political party; (2) his power of recognition of members who wish to speak upon any measure before the assembly, giving preference to those having similar views to his own; and (3) his power as chairman of the committee on rules which enables him to determine almost absolutely what legislation shall be considered in the closing days of the session.

121. Majority and Minority Leaders. Legislation is directed from the floor of the assembly by the majority leader, who is chairman of the committee of ways and means. This is a responsible position and calls for the highest qualities of leadership. The minority party also chooses a leader to direct the action of the members of the minority.

122. Assembly Officers. The principal officers of the assembly are (1) the speaker, who presides over the meetings and appoints the assembly committees; (2) the clerk, who records the proceedings; (3) the sergeant-at-arms, who preserves order; (4) the librarian; and (5) the doorkeeper. Of these, only the speaker is a member of the assembly. He is elected by the assembly for a term of one year.

123. The Senate consists of fifty-one [1] members apportioned on the basis of population. The senate districts, like the assembly districts, are to be changed after every state census, so that they shall so far as possible contain an equal number of citizens, excluding aliens. Senators, like assemblymen, are elected by direct vote of the people. Senate districts must consist of contiguous

[1] Laws of 1907.

territory, and no county can be divided unless entitled to two or more senators.

124. Officers of the Senate. The lieutenant-governor is *ex officio* president of the senate. As presiding officer he has no vote except in case of a tie. A president *pro tempore* is chosen by the senate from its own number to

The Senate Chamber in the State Capitol at Albany

preside in the absence of the lieutenant-governor. He is chosen by the senators in the same manner as the speaker is chosen in the assembly, but has none of the latter's power other than that of recognition of senators desiring to obtain the floor for debate. The other officers are similar to those of the assembly, with similar duties.

125. Members: Qualifications, Term, etc. The only qualification imposed by the constitution for membership in the state legislature is that the candidate shall not, at the time of his election or within one hundred days previous thereto, hold any federal or city office; and the acceptance of such office after election shall vacate the member's seat in the legislature. Senators are elected for a term of two years, assemblymen for one; and both receive a salary of $1500 per year, with an allowance of ten cents per mile for travelling expenses to and from the capitol once during the session. As in congress members of the state legislature are not to be questioned in any other place for anything they may say in debate in the house.

126. Sessions. The sessions of the legislature are annual beginning the first Wednesday in January. No time limit is fixed, but the legislature usually adjourns the latter part of March or the first of April. Special sessions may be called at any time by the governor. In many states the legislature meets but once in two years, and then the sessions are limited to thirty, sixty, or ninety days. Is this a wise plan?

127. Procedure. The rules for conducting business are partly prescribed by the constitution. A quorum usually consists of a majority of the members elected to each house; but when a bill imposing, perpetuating, or renewing a tax, or continuing or renewing an appropriation, or releasing, discharging, or commuting a claim against the state is under final consideration, three-fifths of the members must be present, and the vote must be recorded on the journal. Each house judges as to the qualifications of its

members, chooses its officers, makes the necessary rules, and appoints its committees. Both houses must keep journals and publish their proceedings, excepting such parts as demand secrecy; and all sessions of both houses are open to the public except when the nature of the business demands secrecy. Neither house can adjourn for more than two days without the consent of the other. As in the national congress, the work of the legislature is done by the committee system (For a full discussion, see Chapter XXI, pp. 269–277), and the methods of obstructing and advancing legislation are the same. There are twenty-six standing committees in the senate and thirty-six in the assembly.

128. How a Bill becomes a Law. Any legislative bill may originate in either house and may be amended by the other. The steps in the passage of a bill into law in each house of the state legislature are practically the same and are similar to those in congress (see Chapter XXI, pp. 267–268). The state constitution requires in addition that a copy of the bill in its final form shall be laid on each member's desk at least "three calendar legislative days" before its final passage, unless the governor has certified to the necessity for immediate action on the measure. A bill becomes a law in one of three ways: (1) it may receive a majority of the votes in both houses and the signature of the governor; (2) if the governor refuses to sign the bill, it is returned to the house in which it originated, and if it then receives two-thirds of the votes of both houses, it becomes a law without the signature of the governor; (3) if the governor fails to sign a bill within ten days, Sundays excepted, and the legislature has not adjourned

in the meantime, the bill becomes law. The governor is given thirty days after final adjournment of the legislature to consider the bills left in his hands. Bills not signed within this time fail to become law. The governor may reject one or more items of an appropriation bill without vetoing the whole measure. If a bill appropriates public money or public property for "local or private use," two-thirds of the members must signify their approval before the governor can sign it. All bills appropriating money must definitely state the purpose for which the appropriation is made, and the money must be spent within two years. When the two houses fail to agree, conference committees from each are appointed, and their recommendations are usually voted.

129. Powers of the Legislature. The power of the legislature is limited by the federal constitution, treaties, and laws, and by the state constitution. These it cannot change and must not violate, but otherwise it may pass any law it pleases. In addition to enacting laws, the legislature elects two United States senators and twelve regents. The choice is made by the senate and assembly meeting and voting together; that is, in joint session. The senate may, with the judges of the court of appeals, sit as a court of impeachment; and it has also some authority over the appointments of the governor. The assembly may bring charges of impeachment against high state officials — the governor, lieutenant-governor, judges, etc. *Legislative commissions* may be appointed by either house or jointly for the purpose of investigating any and all questions within the scope of state legislation. (See also special restrictions outlined in Art. III, sect. 18, p. xii.)

QUESTIONS ON THE TEXT

1. Explain the advantage to the people of a legislature consisting of two houses.

2. Why are members of assembly elected more frequently than senators? Why is the number of members of assembly greater than that of senators?

3. Give the divisions of the legislature of this state; the title of the presiding officer of each; special powers of senate.

4. State the provisions of the constitution regarding representation in the legislature; special powers of assembly.

5. When and how is the number of members of the assembly apportioned among the several counties?

6. Compare the office of president of the senate with that of speaker of the assembly, touching on (1) mode of election, (2) privilege of voting, (3) power with reference to the appointment of standing committees.

7. State the conditions which would render a person ineligible to the legislature.

8. Justify the following provision in the state constitution: "For any speech or debate in either house of the legislature the members shall not be questioned in any other place."

9. Under what circumstances and by whom may a special session of the legislature be called?

10. What proportion of the members of each house of the legislature constitutes a quorum to do ordinary business? Mention two cases in which a two-thirds vote is required to pass a bill.

11. Explain the necessity of legislative committees. State two evils that may result from transacting business through such committees.

12. How are contested elections in each branch of the legislature decided?

13. What are the present constitutional provisions regarding the passing of bills by the legislature? as to printing bills? as to impeachment trials?

14. Give in substance an important provision of the constitution in reference to appropriation bills.

15. Mention three restrictions imposed by the constitution on the legislature. Give reason for such limitation.

16. Give two powers common to the assembly and the senate. Mention one power possessed by the senate but not by the assembly.

CHAPTER XI

THE GOVERNOR AND OTHER EXECUTIVES

130. General Provisions. The executive officers of the state are so numerous that it is possible to consider only the more important. There are, however, certain general provisions of the constitution which apply to all alike. In the first place, with the exception of the governor and the lieutenant-governor, the state prescribes no special qualifications for its executive officers. Every state officer must take an oath to support the constitution of the United States and of the state of New York, and to perform his duties faithfully. In order to guard against corruption, a heavy penalty is imposed upon officers accepting a bribe. No official whose compensation is fixed by law is allowed to receive an additional compensation, nor can the salary of an officer be increased or diminished during his term of office. To minimize the influence exercised by large corporations upon legislation, the constitution provides that no state officer shall be permitted to accept a free pass, free transportation, or other special privileges from a railroad, telegraph, or telephone company.

131. The Governor. The most important officer in the state is the governor. A candidate for this position must be at least thirty years of age, a citizen of the United States, and a resident of the state for five years next preceding his election. He is elected by direct vote of the people for

a term of two years at a salary of $10,000[1] per year, with the free use of the executive residence. In case of a tie vote, the legislature chooses by joint ballot a governor from the persons having an equal number of votes. The governor is removable only by impeachment. In case of removal by death, resignation, or impeachment, or in case

The Assembly Chamber in the State Capitol at Albany

of disability of any kind, he is succeeded by the lieutenant-governor. In the event of the inability of the latter to serve, the office devolves upon the president *pro tempore* of the senate, and in case of his failure to serve, upon the speaker of the assembly.

[1] The legislature of 1910 passed a bill recommending that the constitution be amended, making the salary of the governor $20,000; senators, $3000; assemblymen, $2500.

132. Powers of the Governor. The powers of the governor are (1) executive, (2) legislative, and (3) judicial. His *executive duties* are to enforce the provisions of the constitution and all measures passed by the legislature. He is commander-in-chief of the military and naval forces of the state, and transacts all necessary business with the officers of the state, civil and military, many of the more important of whom he appoints. His *legislative power* consists in his exercise of the veto; his annual and special messages pointing out, many times, desirable legislation. In case he is a strong party leader and his party is in the majority in the legislature, his suggestions are generally followed. He may also convene the legislature, or the senate alone, in extra session whenever, in his opinion, the occasion requires. After a bill has been passed by both houses of the legislature, it is sent to the governor. After a bill reaches the governor, it takes the following course: (1) if approved by the governor, he signs it and the bill becomes statute law; (2) if the governor disapproves of the bill, he returns it within ten days, with a memorandum of his objections, to the house in which it originated; if it is repassed by a two-thirds majority of both houses, it becomes a law without his signature; (3) if it is not returned within ten days, Sundays excepted, it becomes a law without the governor's signature, unless the legislature has adjourned, when he has thirty days. The governor may appoint a public hearing upon any bill, and may veto items in an appropriation bill without vetoing the entire measure (Art. IV, sect. 9, p. xviii). His *judicial power* consists in his power to grant reprieves, pardons, and commutations, excepting in cases of impeachment.

Even in cases of treason he may suspend the execution of the sentence until the next session of the legislature. He must, however, report annually to the legislature all cases of the exercise of this power (Art. IV, sect. 5, p. xvii). The power of the governor is further shown in his appointment of a large number of important administration officials, boards and commissions charged with the duty of carrying into effect the laws of the state. There are eighteen such departments, chief among which are the civil service commission, public service commissions (one for the metropolitan district, one for the rest of state), commissioner of excise, commissioner of labor, superintendent of banks, superintendent of insurance. The governor exercises the power of removal of certain state officials with the consent of the senate, and of certain county and city officials without its consent (Art. X, sect. 1, p. xlv). He may assign justices of the supreme court to certain duties, and may fill vacancies in certain judicial, state, and county offices. He [1] may appoint a United States senator to fill a vacancy pending election, and may order an election in a congressional district to fill a vacancy in congress and in this way directly influence federal legislation.

133. The Lieutenant-Governor. Though the lieutenant-governor occupies a less commanding position than does the governor, it would be a great mistake to select for the

[1] In 1908, President Roosevelt invited the governors of the states to meet him in Washington and talk over important matters. The governors have met twice since for similar purposes upon their own motion. This meeting together is referred to as the *House of Governors* and their discussion of important questions is likely to have its effect upon uniform state legislation, and may have some bearing upon federal and state relationship defining more clearly the field of each.

place a man who would not make a good governor should he for any reason be called upon to assume the duties of that office, as has happened. Like the governor, he is elected by direct vote of the people for a term of two years. His salary is $5000 per year. He is *ex officio* president of the senate; and by having the casting vote in case of a tie, and by his power of recognizing members who desire to speak, he may materially affect legislation. He is also *ex officio* member of certain administrative boards and commissions.

134. Other Administrative Officers. The governor is assisted in the performance of the executive work of the state by a large number of administrative officers, boards, and commissions, of whom some are elected directly by the people, others are appointed by the governor with the advice and consent of the senate. Some of these officials correspond exactly in name and function to the president's assistants, the heads of the great executive departments in the national government; but their relation to the governor differs very considerably from the relation of the president's assistants to him. The administrative officers of the state, particularly those elected directly by the people, are practically independent of the chief executive, and are in no sense a cabinet. They do not form an advisory council and need not hold political views in harmony with his. The elective officers are not subject to removal by the governor; and even in the case of appointive officers, the governor can exercise his power of removal only under restrictions. These officers are to a large degree the managers of the state's business, for the state, like the individual, has its purely business interests. These interests

are varied and require the personal attention of hundreds of assistants. Some of the more important business matters are the collection and distribution of the taxes; the administration of schools, charitable institutions, prisons, and canals; the purchase, sale, and care of public lands; the payment of employees, etc. It is simply good business management on the part of the people so to protect their business agents that they cannot be interfered with to any great extent while discharging their obligations to the state.

135. Secretary of State. The secretary of state is elected for a term of two years by the voters of the entire state, in the same manner as the governor. His salary is $5000 per year. He is the keeper of the state archives, the great seal, superintends the publication and distribution of the laws, to which he attaches his certificate. He administers the oath of office to the members of the legislature and to other state officers, and reports to the legislature annually. He is *ex officio* a member of the land office and canal fund, a member of the canal board, of the board of state canvassers (of elections returns), the state board of equalization of assessments, of the state printing board, one of the officers to designate the state paper, is a trustee of Union college, fixes the salaries of the resident officers of the state hospitals subject to the approval of the governor and the comptroller, and performs various minor duties. To assist him, the state supports an office force of thirty-seven persons. The secretary of state can be removed from office only by impeachment.

136. Comptroller. The comptroller is elected for a term of two years by the voters of the entire state and receives a salary of $6000 per year. He audits all accounts against

the state and issues warrants on the treasurer for their payment, as directed by law. He designates the banks in which the funds of the state shall be deposited, collects the tax on corporations, supervises the collection of the transfer and stock transfer taxes, sells the land of delinquent tax-payers in the various counties, in which are included a part of the forest preserve, examines the accounts of the court and trust funds deposited with the treasurer of every county of the state, regulates the forms of accounts and manner of investment, appoints examiners of municipal accounts, and performs various minor duties. He is *ex officio* a member of several important boards and commissions, of the state board of canvassers, and equalization, and a trustee of Union college. For the discharge of the duties of the comptroller's office, the state maintains a force of one hundred twenty-six clerks and assistants.

137. Treasurer. The state treasurer is elected on the general ticket by the voters of the entire state for a term of two years, at a salary of $5000 per year. He is the custodian of all moneys paid into the state treasury, and moneys owed by the state are paid out by him upon proper warrants (or orders). He is a member of the canal board, of the state board of canvassers, of equalization, and of other boards and commissions. He is authorized by law to perform other duties, and may be suspended by the governor during a recess of the legislature and for thirty days after it convenes for neglect of duty. The state supports a force of eleven clerks and assistants to do the work of the state treasurer's office.

138. Attorney-General. The attorney-general is elected upon the general state ticket by all of the voters of the

state. He is chosen for a term of two years, at a salary of $5000 per year. It is his duty to prosecute and defend all actions and proceedings in which the state is interested, and to have charge and control of all the legal business of the officers and departments of the state except the military department. The state supplies him with an office force of twenty-four deputies and clerks. He is a member of the state board of canvassers, of equalization, and of several other important boards and commissions.

139. State Engineer and Surveyor. The state engineer and surveyor is elected upon the general state ticket by all of the voters of the state for a term of two years, at a salary of $5000 per year. He has charge of the surveys and supervises the public lands and canals, and must be a practical engineer. He is *ex officio* a member of several important boards and commissions. The state supplies him with an office force of twelve persons.

140. Other Elective Officers. Besides the above, the people elect fifty-one senators for a term of two years, at an annual salary of $1500, and support in addition one hundred four officers of the senate; one hundred fifty assemblymen for a term of one year, at an annual salary of $1500, and support in addition one hundred and eleven assembly officials; seven judges of the court of appeals for a term of fourteen years, at a salary of $13,700 per year, with $14,200 for the chief judge; and ninety-seven judges of the supreme court for a term of fourteen years, each at a salary of $17,500 per year in the first and second districts, and $7200 per year in the remaining seven districts. These judges are chosen by the people voting by district (see map, p. 122).

141. Appointed by the Governor. In addition to those chosen by the people at the general elections, the following are the chief officers, appointed by the governor by and with the advice and consent of the senate. The only significance to the *number* of officers, clerks, and assistants is to impress upon the student the enormous army of people who are working for the state; that is, who are doing our business for us. This number changes from time to time.

Name	Term	Salary	Main duties
Commissioner of agriculture	3 yrs.	$4000 and $500 for expenses	Appoints a director of farmers' institutes and other officers to enforce the laws. Appoints expert butter and cheese makers to examine and inspect butter and cheese factories and impart information as to best methods of making and improving quality of these products. Has access to all places where dairy products are made and may examine same to detect violations of the law.
Commissioner of excise. Has an office force of 24	5 yrs.	$7000	With his assistants issues liquor tax certificates and collects pay therefor; receives reports of violations of the law.
State board of charities (12). One is appointed from each judicial district and three additional from N. Y. City. Office force of 30	8 yrs.	$10 a day for attendance at meeting; not to exceed $500 a year	Visits, inspects, and supervises all institutions or associations which are of a charitable, correctional, or reformatory character, public or private, with the exception of those intrusted to the commission in lunacy and state commission of prisons; frames rules for reception and retention of inmates; reports annually to legislature.

Name	Term	Salary	Main duties
Civil service commission (3) not more than two of whom are to be from same political party. Office force of 16	Not fixed	$3000 and travelling expenses	Aids the governor in preparation of rules with which to test fitness and capacity of applicants for employment in the public service of the state, to the end that appointments and promotions shall be made on the basis of merit and competition.
Conservation commission (3)[1]	6 yrs.	$10,000 and necessary expenses	Acquires forest lands for state, but lands not to be purchased without consent of governor; propagates and distributes among the waters of the state, food and game fish, has charge of state hatcheries; enforces game laws, etc.
Commissioner of health. Must be a physician of ten or more years experience and also a college graduate. Office force of 36	4 yrs.	$4500 and expenses	Looks after the interests of health and life of people of state; inquires into cause of disease, especially epidemics; investigates source of mortality and effect of localities, employments, and other conditions upon public health; collects vital statistics; looks after health as it relates to sale of food, drugs, etc.
Commissioner of labor.[2] Office force of 105	4 yrs.	$5000	Sees to enforcement of factory laws; collects labor statistics, and investigates strikes and labor troubles, seeking to mediate between parties or to arbitrate their differences.
State commission in lunacy (3).[3] Office force of 22	6 yrs.	President receives $7500 others $5000.	Has exclusive jurisdiction over *all* institutions for care of insane; examines into their condition, inquires into their methods of management and government;

[1] This does away with the forest, fish, and game commission, the forest purchasing board, state water-supply commission, and the Black river water-power commission.

[2] Appoints two deputies at a salary of $3000 each.

[3] The second member must be a lawyer and the third a layman.

Name	Term	Salary	Main duties
		Each of the three is allowed $1200 for expenses	licenses private institutions. Supervises the expenditures of all state hospitals; requires annual reports from state hospitals.
State commission of prisons (7 members). Office force of 4	4 yrs.	$10 per day and their expenses	Visits and inspects all institutions used for the detention of sane adults charged with crime; aids in securing their just, humane, and economic administration; investigates their management and the conduct of their officials; protects and preserves health of prisoners; arranges for their employment.
Commissioners of quarantine (3 members)	3 yrs.	$2500	Take charge of the quarantine establishment of New York harbor and make rules and regulations for its government.
Two Public Service Commissions of five members each	5 yrs.	$15,000	Represents the interests of the general public in matters relating to railroads, street-car lines, and common carriers, with reference to service, charges, switches, side tracks, freight rates, etc.; also in matters relating to gas and electrical corporations, telephone and telegraph companies and those employed by the same. The aim is to improve service at less cost and with greater safety to the public and employees of such companies.
State tax commissioners (3 members). Office force of 19	3 yrs.	$5000	Visit officially every county once in two years and inquire into the methods of assessment and taxation; furnish local assessors with instruction; hear and determine appeals from local

Name	Term	Salary	Main duties
			equalizations within the several counties; report annually to legislature.
Superintendent of banks. Office force of 45	3 yrs.	$7000 Expenses of this office are paid by the institutions inspected.	Supervises banks operated under state laws, savings banks, trust, loan, and mortgage companies or associations, etc. Receives reports from these, banks reporting quarterly, savings banks and all others in general, semi-annually. Reports annually to legislature.
Superintendent of insurance. Office force of 72	3 yrs.	$7000. Expenses are paid by insurance companies doing business in this state	Controls and supervises insurance companies doing business in the state; requires all life and casualty companies of the state and all foreign insurance companies to deposit securities with him for the protection of policy-holders; has power to refuse a company right to transact business in the state. Reports annually to legislature.
Superintendent of public works (a deputy and three assistant supts., appointed by the supt. of public works for 3 yrs., each receive a salary of $3000)	2 yrs. i.e., for term of governor who nominates him, or until his successor qualifies	$6000	Carries out laws relating to repair and navigation of canals, their construction and improvement, except so far as the execution of such laws may be confided to state engineer and surveyor; subject to the control of legislature, makes rules and regulations for navigation or use of the canals; has charge of expenditure of all moneys appropriated by legislature for public improvements authorized by special acts.
Architect	During pleasure of governor	$7500	Prepares plans, specifications and acts as supervising architect of all buildings constructed by the state.

Name	Term	Salary	Main duties
Superintendent of state prisons. Has an office force of 18	5 yrs.	$6000	Supervises state prisons and convicts therein, discipline, police, contracts and penal concerns thereof subject to existing laws; appoints agents and wardens, physicians and chaplains of prisons; reports annually to legislature.
State superintendent of highways	2 yrs.	$7500	Charge of state roads and improvements.
Health officer of the port of New York	4 yrs.	$12,500	Superintends and controls the quarantine establishment and the care and treatment of the sick.

142. Chosen by the Legislature. The legislature by joint ballot chooses twelve members of the board of regents, one each year for a term of twelve years (see § 158).

143. Summary. The officers and judges given above, not including the vast army of office assistants, at the salaries named, total nearly two million dollars. If we add to this sum the salaries of office assistants and the salaries and travelling expenses of those named and the equally large number who are not named, the magnitude of the state's business and its army of employees will be, in a measure, realized. No political significance whatever is attached to the vast majority of the state's employees, and since better results for the state can be obtained by trained help, the necessity for protection for efficient service and safeguarding entrance to the service, the work of the civil service commission, is apparent. Furthermore, state officials should work as many hours per day as many days per year as they would be required to do by a private corporation.

QUESTIONS ON THE TEXT

1. State the conditions of eligibility to the office of governor, giving reasons. What is his salary? length of term?

2. Give the mode of electing the governor and five of his duties. Name the other officers elected by direct vote of all the voters of the state. What state and county officers may he remove?

3. Give in substance the provision of the constitution in reference to the succession to the governorship in case of the death, resignation, etc., of the governor.

4. What control has the governor over legislation? On what grounds is this arrangement justifiable?

5. State the qualifications, term of office, salary, and chief duties of the lieutenant-governor.

6. When is the lieutenant-governor not entitled to a casting vote? Why this restriction?

7. Mention the principal duties of the following officers: (1) attorney-general, (2) state engineer and surveyor, (3) comptroller, (4) state treasurer.

8. In what respects are the duties of the secretary of state of the United States and of the state (1) similar, (2) dissimilar?

9. Distinguish between the duties of the state comptroller and those of the state treasurer. Which officer is the more important? Give reasons for your answer.

10. Name two state officers appointed by the governor.

11. Name one state commission and mention its principal duties.

12. State the manner of obtaining office, the length of term, and the chief duty of the commissioner of excise.

13. Describe the organization and mention the principal functions of the state board of charities.

14. Describe the organization and state the principal function of the civil service commission; of the public service commissions.

15. What is meant by the civil service? What are the provisions of the constitution of this state regarding the civil service? What important change was made in this law in 1899?

16. Give in substance the provision of the constitution in reference to civil service appointments and promotions.

17. What are the principal duties of the department of health?

18. Describe the department of labor touching on (1) organization, (2) principal functions.

CHAPTER XII

JUDICIAL DEPARTMENT

144. Courts and Judges. The business of interpreting the law is vested in a regular series of courts — justice's and municipal courts, county court, supreme court, appellate division of the supreme court, and court of appeals. No judge of any of these courts, excepting justices of the peace, may receive any fees or perquisites of office in addition to his regular salary, which is determined by law and cannot be increased or diminished during his term of office. Every member of these courts, excepting justices of the peace and the county judge in Hamilton county, must be an attorney and counsellor of this state. None of these officers, however, except justices of the peace and county judges and surrogates in counties of less than 120,000 population, may carry on any private practice or act as a referee in the state during his term of office; and the legislature may impose a similar prohibition upon county judges and surrogates in other counties. When a judge has reached the age of seventy years he must retire.

145. Justice's Courts. The lowest court for the trial of cases both civil and criminal is the justice's court, presided over by a justice of the peace. This is primarily a town court, and is nearest to the people. City governments have provided special courts, which have absorbed much of the business of justice's courts. The justices, four in each town,

are chosen by the voters in town meeting for a term of four years. They are paid by fees. Their jurisdiction is limited to petty criminal cases, and to civil cases where the amount involved does not exceed $200. They may, however, issue warrants for the arrest of persons suspected

Map of the State of New York showing the Nine Judicial Districts

of graver offences, and may after examination admit them to bail (money security for their appearance in court when wanted) or send them to jail to await the action of the grand jury. Over both civil and criminal cases of a minor nature a justice court has original jurisdiction; that is such cases may be begun there. Appeals from the decision of the justice's court may be taken to the county

court; that is, either party to a civil suit may upon request have his case reëxamined in the county court.

146. County Courts. The court next higher than the justice's court is the county court. As its name implies, its jurisdiction is limited to the boundaries of the county. It has both original and appellate jurisdiction over most of the cases, either civil or criminal, arising in the county. Its jurisdiction in civil cases is limited to cases in which the amount involved does not exceed $2000. Issues of fact in a county court are determined by a jury of twelve men drawn by the county clerk from the list furnished by the town board and the board of supervisors (§§ 154–155). In every county except the county of Kings, which has two county judges, and the county of New York, which has no county court, there is a single county court presided over by a judge chosen by the voters of the county for a term of six years at a salary fixed by law, but varying in different counties. County judges may be removed by a two-thirds vote of the senate on the recommendation of the governor; but such removal may be made only for cause and after the judge shall have been informed of the charge against him and shall have been given opportunity to defend himself.

147. The Supreme Court is the next court higher than the county court. In this court may be tried all grave crimes against the laws of the state, and all important civil cases. The state has been divided into four judicial departments for convenience in administering justice, and these have been subdivided into nine judicial districts, in each of which this court holds its sessions. The judges are ninety-seven in number. The first judicial *department*

consists of the county of New York, its boundaries being the same as the first judicial district. The second department consists of the second and ninth districts, counties of Kings, Queens, Nassau, Suffolk, and Richmond. The third department includes the third, fourth, and sixth districts; and the fourth department the fifth, seventh, and eighth. On the map giving the judicial districts, ascertain what counties are included in the third and fourth departments. In what department and district is your county? The first district is entitled to thirty judges; the second to twenty, the third, fourth, and sixth to six each; the fifth to eight; the seventh to seven; the eighth to twelve, and the ninth to five. Supreme court judges are elected for a term of fourteen years by the voters of their respective districts. In the first and second departments, judges are paid a salary of $17,500 per year, and a salary of $10,000 per year in the third and fourth. The judges are removable by concurrent resolution of the two houses of the legislature, providing two-thirds of the members concur. The supreme court has original and appellate jurisdiction in civil and in criminal cases; that is, cases may be begun in this court or appealed to it from the county court.

148. Appellate Division of the Supreme Court. To lighten the labors of the court of appeals another court was created in 1894, called the appellate division of the supreme court. The governor chooses from time to time twenty-two judges from the ninety-seven supreme court judges, to serve as an appellate division. For this service they receive additional compensation. For facilitating the work of this court, the state has been divided into four

departments, seven judges having been assigned to the first, and five to each of the other three. No more than five justices may sit in any case, four are necessary to constitute a quorum, and the concurrence of three is necessary to a decision. One from each department is named chief justice, and he must be a resident of the department for which he is chosen. The chief justice serves during his entire term of office. The associates are appointed for a term of five years or for such part thereof as remains of their term of fourteen years at the time of their appointment. The jurisdiction of this court is strictly appellate, cases being brought to it from the county courts and from the trial and special terms of the supreme court. The appellate division of the first department sits at New York, the second at Brooklyn, the third at Albany, and the fourth at Rochester, but terms of this court may be held in other places whenever the judges of a department decide that the interests of the public will be better served.

149. Court of Appeals. The highest court in the state is the court of appeals. It is a court of last resort in questions arising under the laws of the state. The judges are seven in number, and are chosen by the direct vote of the people of the whole state. Their term is for fourteen years and their salary is $13,700 per year. One of their number is chosen as chief justice, and receives $14,200. No judge of this court can be removed without the action of two-thirds of the members of both houses of the legislature. Temporary vacancies are filled by the governor, with the advice and consent of the senate, until the time of the next general election. This court is almost continuously in session in rooms in the capitol building at Albany. Five

judges are necessary to constitute a quorum, and the concurrence of four is necessary to a decision. Its jurisdiction is strictly limited to reviewing questions of law, excepting where the judgment is death. That is to say, this court deals only with cases brought up from the lower courts on appeal, and examines them only with a view to deter-

Court of Appeals Room in the State Capitol at Albany

mining whether the law has been properly interpreted. It is only in grave criminal cases that it examines into the facts.

150. Special Courts. Besides the regular system of state courts, there are certain special courts, — the court of impeachment, the court of claims, and the surrogate's court. The *court of impeachment* differs from all courts of

law. Charges of impeachment are brought against the governor, lieutenant-governor, judges, etc., by the assembly, and tried before the senate, the judges of the court of appeals, and the president of the senate sitting together as a court of impeachment. When the governor or the lieutenant-governor is on trial, the president of the senate does not sit with the court, it being presumed that he would be an interested party. A two-thirds vote is necessary for conviction, and the power of the court does not extend further than to remove the person convicted from office, or disqualifying him from holding any office of honor, trust, or profit under this state. The *court of claims* consists of three judges appointed by the governor, with the advice and consent of the senate, for a term of ten years, at a salary of $8000 per year each. One of their number is designated by the governor as presiding judge. Its jurisdiction extends to cases of private claims against the state and of the state against a claimant. A state is a sovereign in strictly state matters; that is, it is the original, first, or highest authority within its field. It is, therefore, incompatible with state dignity to be sued by one of its subjects, so to speak. In order, therefore, to get around this question of dignity and permit the subject to do the same thing under a different name, the court of claims is established. The jurisdiction of the *surrogate's court* is often exercised by the county court. In counties with a population of over 40,000, a special surrogate's court for the trial of cases involving the settlement of wills and estates of deceased persons may be had. This court also appoints guardians for the care of minors (children under twenty-one years of age) and their property. The term

and the salary of the surrogate, excepting in the county of New York, is the same as that of the county judge. *Coroner's courts* are held for the purpose of investigating the causes of suspicious and sudden deaths. The coroner has power to issue a warrant for the arrest of any person charged with the commission of the crime under investigation. In the course of his investigation, he may summon any persons as witnesses, and examine them as to their knowledge of the case under investigation. The coroner's court, justice's court, and most city courts are not courts of record, while county, surrogate's, supreme, and the court of appeals are courts of record; that is, the last four courts each have a clerk who keeps a detailed record of what the court does. Courts of record, also, have an official seal.

151. The Duty of the Courts. Courts frequently find it necessary to determine what the law means, and to determine whether a law is constitutional, as well as to decide disputes between individuals. People do not all get the same meaning from reading the same law; each may insist that he is correct, and the court has to decide. Or a law passed by the legislature may affect, seriously, business firms of long standing. Any firm or individual so affected may bring suit to test the constitutionality of the law, when again the courts must decide. If found to be constitutional, then the law stands and must be obeyed; if not constitutional, then the courts set it aside and the conditions remain the same as they did before the act was passed by the legislature.

152. Civil Procedure. Before we can have a lawsuit there must be a disagreement between individuals which

they refuse to settle between themselves. Suppose that such a disagreement involves the ownership of property. A suit at law over property is called a civil suit. The party who is aggrieved brings the dispute into court for settlement. He is said to be the *plaintiff*, and to have brought the suit. The person who is opposed to this view is called the *defendant*. The defendant must know who has made a charge against him, what the charge is, and when he must answer the charge. The notice and the answer must be in writing. This notice is called a *summons*. If the defendant fails to appear in court at the time set for the trial, the plaintiff may prove his case by his witnesses and himself, and the judge will direct the executive officer, sheriff, or constable to execute the order of the court, or *judgment*, and put the plaintiff in possession of his claim. If, however, the defendant appears and disputes the claim, then the case has to be tried and the facts established by the jury. After hearing the witnesses on both sides, the jury renders a decision called a *verdict*, and the judge orders the one found to be in the right to be given possession of the property as in the former case. If both parties agree, the case may be tried before the judge without the aid of a jury.

153. Criminal Procedure: the Arrest. The burning of a building is a crime which we call *arson;* the forcible taking of another's goods without his consent, *robbery* or *burglary;* the attack upon one's person, *assault*. If any crime of this or of another nature has been committed, it is the duty of the peace officer — sheriff, constable, policeman — to try to find the criminal. The injured party or some one knowing of the crime goes before a

judge, justice, or mayor, tells him what has happened, and describes the person, if possible. If the magistrate is convinced that a crime has been committed, he issues a *warrant* for the arrest of the criminal. This warrant, a written paper describing the criminal and directing that he be brought before the magistrate, is given to a peace officer. To arrest the criminal, the officer may call upon people to aid him, may break into a building, and use violence, even to the death of the criminal if necessary, *but never more than is necessary;* for he, like others, must obey the laws.

154. Criminal Procedure: the Indictment. After the arrest, the criminal is taken before the magistrate, who informs him of the charge against him and the facts pointing to the truth of the charge. The law assumes all men innocent until proven guilty. With as little delay as possible, the prisoner is examined, and either dismissed or held for trial, according to the evidence. Unless the offence is of a serious nature, the prisoner may furnish bail to appear in court when wanted. *Bail* is a written agreement by responsible persons to pay a sum of money in case the prisoner does not appear in court at the date and hour set. If the prisoner cannot furnish security, he must go to jail until the hour of his trial has struck. If the charge is for a capital or otherwise infamous crime, the prisoner is not admitted to bail, but must remain in jail to await the action of the grand jury. The *grand jury* is a body of men selected by the county judge, county clerk, and sheriff from a certified list of tax-payers of the county furnished by the board of supervisors. These names are put into a box. When the court for the trial

of criminals is held, the names of twenty-four men are drawn out of this box by the county clerk in the presence of the judge and sheriff. The drawing is done at random. The grand jury consists of not less than sixteen nor more than twenty-three men, excepting in New York county, where the number is thirty-six. It is the business of the grand jury to inquire into the facts of the cases brought before it by the district-attorney. Witnesses are summoned and evidence produced to support the charges made against the prisoner. The case is presented by the district attorney in writing, and is called *a bill of indictment*. If twelve or more members of the grand jury think the evidence is sufficient to warrant a court trial, the foreman writes across the back of the indictment the words, *a true bill*, and the prisoner must stand trial in court. If, on the other hand, a majority of the jury think the evidence insufficient, the indictment is returned to the court with the words, *not a true bill*, which ends the case.

155. Criminal Procedure: the Trial. Supposing the grand jury has reported a true bill. Then the prisoner appears in the custody of the sheriff in open court and stands trial. If the case is a misdemeanor (a lesser form of crime), the prisoner may not appear in person, but may be present through his attorney; if the case is a felony (a more serious crime), he must appear in person. The charge is made out as against the people of the state of New York, who are represented in court by the district attorney, who is, in such cases, a state officer, although chosen by the people of the county. The indictment is then read to the prisoner before the judge in open court, and he is asked to answer as to the truth of the charge.

If he pleads (answers) guilty, the judge sentences him to punishment as fixed by state law, and the case ends. If he claims to have been at some former trial in a court of law where he has been acquitted or convicted of this same charge (which is not a repetition of the offence), and his statement is found to be true, he is dismissed and the case is ended. If, on the other hand, he pleads not guilty, then a question of fact arises, and the case is tried before a jury. The prisoner has a right to have an attorney and to summon witnesses for his defence. If he is unable to pay these, then the expense must be a public charge. A *trial* or *petit* jury consists of twelve citizens of the United States residing within the county where the crime was committed. They must be property owners, between the ages of twenty-one and seventy years. A list of such persons is made out by the supervisor, town clerk, and assessors in each town, and sent to the county clerk, the number from each town depending upon population. The county clerk selects thirty-six names in the same manner as he did the grand jury. From this number twelve are drawn to try the case. The district attorney then presents the case and brings witnesses to prove to the jury the guilt of the person charged with the crime. The attorney for the prisoner brings witnesses to prove the contrary. When both sides have finished, the judge makes his *charge* to the jury; that is, explains the law governing the case. The jury then retires to consider the evidence and arrive at a decision. If the twelve jurors cannot agree, the foreman reports *no agreement;* if they all agree, he reports *guilty* or *not guilty*. If guilty, the judge pronounces sentence, the prisoner is turned over to the peace officers

and sent to prison or to death; if not guilty, the judge sets the prisoner free; if a disagreement, then the case is either set down for a new trial or dismissed. The prisoner has the right of appeal to a higher court if the jury has rendered a verdict of guilty, on the ground that the verdict is not in accordance with the law or that an error has been committed in the first trial. The higher court will then review the proceedings of the lower court, and, if the appeal is sustained, order a new trial; if no error is found, the appeal is dismissed and the order of the lower court stands. It is the duty of all to serve as jurors and to the best of their ability to further the ends of justice.

156. United States Courts: Perjury. New York state is in the second judicial circuit of the United States court of appeals. The state is divided into four districts — northern, southern, eastern, and western — in which are held regular sessions of the United States district courts (see Chapter XXIV, p. 337). These courts are held in various cities within each district. All witnesses in the various courts are required to make oath or affirmation to tell "the truth, the whole truth and nothing but the truth." Jurors are required to make oath or affirmation to truly and faithfully perform their duties to the end that justice may be secured. In signing certain legal papers similar formalities are required. Any person violating such oath or affirmation is guilty of the *crime of perjury*, for which the law provides severe penalties. Jurors receive $3 per day for actual service.

QUESTIONS ON THE TEXT

1. Outline the system of state courts. What kind of jurisdiction has the court of appeals? supreme courts? county court?

2. Mention three courts in the state having appellate jurisdiction; one having original jurisdiction only.

3. What is the limit in a civil action of the jurisdiction of a justice's court? of the county court?

4. Give the manner of obtaining office, length of term, manner of compensation, and two duties of the county judge.

5. Mention the terms of the supreme court in this state. Give the number of judicial districts and judicial departments in the state.

6. Describe the appellate division of the supreme court as to (1) jurisdiction, (2) number, manner of obtaining office, and length of term of members.

7. Describe the highest court of this state as to (1) number of members, (2) conditions of eligibility, (3) length of term, (4) jurisdiction.

8. Compare the judges of the court of appeals with those of the United States supreme court with reference to (1) number, (2) manner of obtaining office, (3) length of term.

9. Give in substance the provision of the constitution in reference to removal of judges.

10. In what court of this state would a murderer be tried? To what other court might he appeal?

11. Write on the court of claims. Is it a *law* court?

12. State the manner of obtaining office, the length of term, and the chief duty of a judge of the court of claims.

13. Mention two duties of the surrogate.

14. Distinguish between the duties of a grand jury and those of a petit jury. Describe the process of selecting these jurors and of their finding an indictment.

15. Give an outline of the method of legal procedure in ordinary civil cases.

16. Give an outline of the method of procedure in criminal cases.

CHAPTER XIII

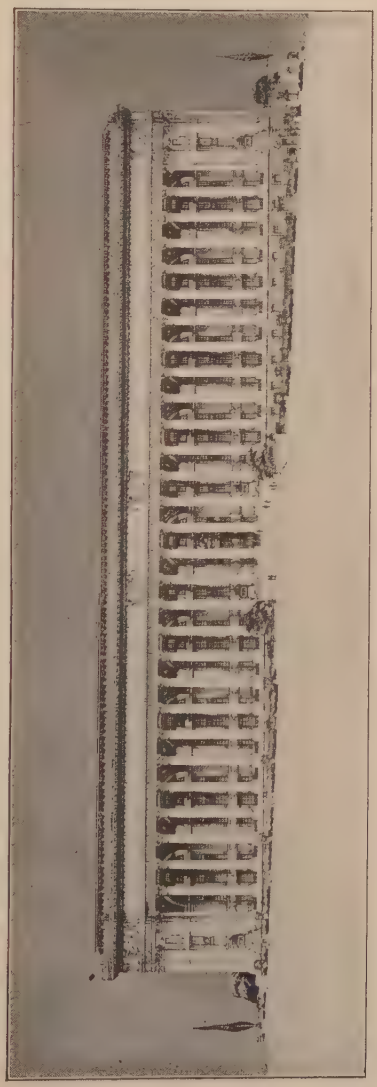
STATE EDUCATION DEPARTMENT

157. Historical Sketch. From its earliest history the state has been interested in the education of its citizens, first as a Dutch colony, then as an English colony, and finally as a state. The first legislature that met under the constitution, 1784, received a message from the first constitutional governor, George Clinton, urging the immediate encouragement of the schools. Since that date almost every legislature has had under consideration some important educational question or appropriation. The first step taken by the legislature toward the creation of an educational system for the state was the incorporation of the state board of regents in 1784. Three years later, at the request of the regents, the legislature revised the school law so as to extend the control of the regents over all the instrumentalities for higher education in the state; and in 1795, through the persuasion of the board, the state made a liberal appropriation for the purpose of establishing a system of common schools. The people were, however, unwilling to intrust the management of these common schools to the board of regents; and in 1854, after a long period of struggle over their management, during which nothing very effective was done towards organizing the system, it was decided that the elementary schools should be administered independently, and the depart-

ment of public instruction was created. Thus it came about that the educational system of the state has been, until 1904, administered by two separate and quite independent bodies, one the board of regents of the university of the state of New York, whose function was to "encourage and promote education in advance of the common elementary branches"; the other the department of public instruction, exercising control over the whole elementary school system.

158. Board of Regents. The University of the State of New York to-day is a vastly different institution than was contemplated by the legislature granting its charter in 1784. The legislature had in mind an ordinary university; we now find it a federation of higher institutions, libraries, museums, technical and professional schools exercising its authority through the commissioner of education over the secondary and elementary schools as well. The educational interests are thus under the general supervision of the twelve regents, elected on joint ballot by the legislature, since the regents choose the commissioner of education. The regents have power to incorporate, alter, or revoke the charters of universities, colleges, high schools, and academies; to distribute to them state funds to which they are entitled; to inspect their workings and require annual reports; to establish examinations and confer certificates and degrees; to choose a commissioner of education; to supervise the state library and museum; to establish extension courses, approve the appointments of the commissioner of education, and make rules and regulations necessary for carrying out the laws of the state.

159. State Commissioner of Education. Under the unification law of 1904, the board of regents elect a commissioner of education to serve during the pleasure of the board, at a salary of $10,000 per year, with no allowance for expenses. The education department of the state government is under his immediate direction. The commissioner appoints three assistant commissioners, at a salary of $5000 each, and a large number of chiefs of divisions and other assistants. The department is divided into ten divisions as follows: admin-



EDUCATION BUILDING

This magnificent building is the home of the State Education Department

istration, attendance, extension, examinations, inspection, law, libraries, statistics, trade schools, and visual instruction. Each assistant commissioner is at the head of a series of schools as follows: colleges, professional and technical schools are under the first assistant; high schools and academies under the second assistant; elementary, common schools and normal schools under the third assistant. The commissioner apportions the public school moneys of the state, may remove any school officer, or may revoke any teacher's license for cause. It is his duty to interpret the school law and decide cases brought up to him on appeal from the decision of lower school officials, or brought directly to him.

160. School Statistics. In 1909 there were 10,592 school districts in the state and 12,069 school houses. The total valuation of the school property of these districts in 1909 was estimated at $177,733,272, and the number of children attending school was 1,386,712. There were 43,272 school teachers in the state in 1909, and the expenditure for public education that year was $53,962,883, and $21,026,370 for higher (college) education. In this state there are 692 public high schools, and it would seem that there is no reason for ignorance. All this great array of possibilities is free to all residents of the state in the districts in which they reside. State aid to schools is supplemented by local taxation on a most liberal scale.

161. Supervisory District. Each county of the state, excepting those within the boundaries of New York city, is divided into supervisory districts, varying from one to eight. In these districts cities and villages having 5000 or more inhabitants are not included. In such cities and

villages the requirement of the state constitution for the provision of free public schools is met by the terms of their charters. Villages and cities each constitute a school district with an organization similar to the common school district (see Chapter II), having a board of education in place of a trustee. The board of supervisors in each county is charged with the responsibility of dividing the county into supervisory districts. In so doing they must not divide a town, and the territory of the district must be compact and contiguous.

162. District Superintendent. The district superintendent is chosen by the school directors of his district, two from each town for a term of five years, at a salary of $1200 per year, with $300 per year for expenses, both sums being paid by the state. This sum may be increased by the consent of the supervisors of the towns of the district, the increase being paid by levying a tax upon the towns of the district. His term is for five years, and he may be removed by the state commissioner of education. Any citizen of the United States, twenty-one years of age, a resident of the state, may be chosen district superintendent without respect as to sex. The educational qualifications are that the candidate shall hold a certificate to teach in any of the public schools of the state without further examination and also pass an examination in the supervision and teaching of agriculture. It is not necessary that a district superintendent should be a resident of the district at the time of election, but he must become one after being chosen. If removed from office, a person becomes ineligible for reëlection for a term of five years. The district superintendent is the superintend-

ent of all the common schools of his district. He has power to form new districts and to change the boundaries of old ones. Under the direction of the state commissioner of education, he may examine and license teachers. He has power to condemn school houses and order the people of a district to build a new one. Appeals from his decisions are taken to the state commissioner of education.[1]

163. Compulsory Attendance. Not only has the state provided free schools for all its children, but it has gone a step farther and made attendance compulsory. In this matter, the state dictates to the parent and protects the rights of the child in the matter of his education. Children between the ages of seven and fourteen years who are mentally and physically capable of attending school must attend school regularly or receive equivalent instruction from a tutor. Children fourteen to sixteen years old may secure a permit to work, if they have attended school at least one hundred and thirty days since their thirteenth birthday. If not legally employed, they must be in school up to sixteen years of age. Permits are granted by the health officers upon the signed statement from the schools showing that the applicant has met the provisions of the law in all particulars. Attendance officers are appointed to see that the provisions of the law are carried out. It is illegal to employ any child without such permit, and parents and employers are subject to prosecution and fine

[1] A state-wide pension for public school teachers is provided by law. To this fund, teachers are required to pay one percent of their salaries. A teacher who has taught in public schools twenty-five years, fifteen of which are in this state, may retire and receive an annuity equal to one-half of his last salary, providing said one-half does not exceed $600. The law is administered by a board of five members appointed by the state commissioner of education.

for evading the law. Attendance officers may arrest a truant pupil without a warrant.

164. Qualification and Training of Teachers. Schools receiving state aid must meet the state requirements in the qualification of their teachers. It is illegal to pay state money or money raised by local taxation for the support of common or public schools to an unlicensed teacher, and trustees and boards of education authorizing such expenditure are personally liable and may be made to reimburse their communities. There are nearly twenty different kinds of teachers' licenses. For the preparation of teachers, the state provides a normal college at Albany and ten normal schools located as follows: Plattsburg, Potsdam, New Paltz, Oswego, Oneonta, Cortland, Brockport, Buffalo, Geneseo, and Fredonia. It also provides training schools and training classes in high schools, and recognizes the work done in college for the training of teachers.

165. State Aid to Schools. In addition to the money raised by local taxation for the support of the public schools, the state makes large appropriations from the general state funds. The legislature of 1910 made the following appropriations: for common schools, $4,800,000; for cities, academic departments, academies, and libraries, $650,000; for normal schools, $480,000; for training classes and schools, $125,000; for teachers' institutes, $47,200; for salaries of 114 school commissioners, $114,000; and for Indian education, $8100. The commissioner of education apportions the first two items given above as follows: to cities and villages having a population of at least 5000 and maintaining a superintendent of schools,

$800; a district quota varying from $125 to $200, and a teacher's quota of $100 for each teacher employed in any school district, village or city, not counting the first teacher; and $700 to each city or village maintaining a training class. The state also pays liberal sums toward library books and apparatus equal in amount to sums raised by the locality up to a certain limit, and in other ways appropriates money to be used for local school purposes.

166. Distribution of State Aid. Payment from this state school fund is made to the county treasurer of each county for all the schools located in the county, by the state treasurer on the warrant of the comptroller or the certificate of the commissioner of education. The county treasurer turns over to the supervisors of the towns the sum of money to which the schools of each town is entitled. In cities and villages having a population of at least 5000, the county clerk turns the money over to the chamberlain or treasurer of the city or village, unless there is a separate treasurer of the board of education provided in the local charter, in which case it is turned over to him.

167. School Trust Funds. In addition to the money raised by local taxation, voted at school meetings and apportioned by city boards, the state has certain trust funds which it manages in the interests of the schools. The proceeds from these funds is also in excess of the moneys voted by the legislature out of the general state funds. These trust funds are known as (1) the common school fund, (2) the United States deposit fund, (3) moneys arising from the sale or rental of the gospel and school lands, and (4) the literature fund. The common school fund is

the result of the sale by the state of public lands; the United States deposit fund is the state's share of a $30,000,000 surplus that had accumulated in the United States treasury and which was distributed to the states on the basis of population in 1832, to be kept by the states until called for by the federal government; the gospel and school lands fund resulted from an action of the state in setting aside in each township one lot for the support of the gospel and one for the support of the schools of the town; the literature fund resulted from the sale by the state of the unappropriated public lands.

168. The School District. For the details of the work of a school district, its officers, powers, duties, etc., see Chapter II.

QUESTIONS ON THE TEXT

1. Give an outline of the educational system of New York state.
2. Describe the university of the state of New York, stating the number of regents, their term of service, mode of election, and powers.
3. State the mode of appointment, the length of term, and the principal duties of the commissioner of education.
4. State the chief provisions of the compulsory education law in this state. Why is such a law important in a republic?
5. Give the length of term, salary, and three principal duties of a school commissioner in the rural sections of this state.
6. Mention the chief differences between the powers of a board of education of a union school and the powers of the trustees of a common school district.
7. Name the officers of a union free school district.
8. Describe the process of forming a union school district.
9. Mention five different ways in which a person may become legally qualified to teach in a public school in this state.
10. Name the officers of a common school district. How often and by whom are they elected?

CHAPTER XIV

STATE INSTITUTIONS

169. State Agricultural School. The state maintains a school of agriculture at Morrisville in Madison county for the purpose of giving free instruction in agriculture and allied subjects and to prepare students for more advanced courses in the state college of agriculture at Cornell university. The school is under the care and management of a board of seven trustees, of which number the state commissioner of agriculture and the director of the state college of agriculture are two. The other five are appointed by the governor and confirmed by the senate. At least two of the trustees must be residents of Madison county, and one a person recommended by the state grange.

170. State College of Agriculture. The state college of agriculture is located at Ithaca, and forms one of the large group of buildings of Cornell university. Besides the regular courses, the college conducts a short course of a few weeks during the winter months for the special benefit of those men and women who are unable to attend the regular session. A most thorough extension course is maintained by the college, and experiments are worked and exhibits made in different parts of the state at farmers' institutes, agricultural fairs, etc. The college has for its use an extensive farm, and practically covers every department of agriculture and animal industry. Instruction in this college is free to all students of this state. A

two-years course in agriculture is also maintained by the state at St. Lawrence university at Canton, and at Alfred university at Alfred. It also maintains an experiment station and farm at Geneva.

171. State Veterinary College. The state maintains at Ithaca a veterinary college. It is one of the group of fine buildings which the state has erected at Cornell university. The course of instruction is given in coöperation with the university. Tuition in this college is free to students resident of this state. The diseases of domestic animals are here studied and taught in the same manner as are the diseases of man in a medical college. The trained faculty in charge render great service to the state in investigating animal diseases, in diagnosing the infectious and other diseases, prescribing methods for their prevention and in many other ways rendering assistance.

172. Normal Schools. For the preparation of teachers, the state supports ten normal schools of equal rank (§ 164). Graduation from a normal school entitles one to a life certificate to teach in the public schools of the state. A high-school diploma representing a four-years course approved by the state commissioner of education is required for entrance. The state also maintains a normal college located at Albany for the purpose of further preparing those who wish to take up the more advanced work of teaching. Tuition is free in normal schools and in the normal college. Those desiring to enter any of these schools obtain an application blank from the principal.

173. Schools for the Blind, Deaf, and Dumb. The state maintains various other schools in whole or in part. A most excellent school for the blind is maintained at Batavia,

and children are here taught regular academic, manual, and art courses much the same as in a day school where the children are able to see physically. The state also contributes to the support of the New York institution for the blind, the institute for the deaf and dumb in New York City, the Le Couteulx Saint Mary's institution for the improved instruction of deaf-mutes at Buffalo, the Central New York institution for the improved instruction of deaf-mutes at Rome, the Northern New York institution for deaf-mutes at Malone, Saint Joseph's institution for deaf-mutes at West Chester, the Albany home for the deaf, and the Western New York institution at Rochester. Thus it will be seen that the state supplements the work of the philanthropist in providing for and supervising the education of its unfortunate but otherwise capable children.

174. Hospitals for the Insane. In addition to the work of philanthropy outlined in the above paragraph, the state maintains thirteen hospitals for the insane, located as follows: Utica, Willard, Hudson, Middletown, Buffalo, Binghamton, St. Lawrence, Rochester, Gowanda, Kings Park, Long Island, Manhattan, and Central Islip. These hospitals are in charge of local boards of managers appointed by the governor and confirmed by the senate. These boards have general direction and control of the property, make rules outlining the duties of officers and employees, and a majority of each board is required to visit its hospital at least once each month for the purpose of making a thorough inspection. The commission in lunacy appoints a superintendent, with the approval of the board of managers, for each hospital, who shall be a "well educated

physician, a graduate of an incorporated medical college, and who shall have had not less than five years' actual experience in an institution for the care of the insane." The state is divided into thirteen hospital districts. An insane person is arrested and examined by a local commission before a judge who sentences the person found insane to an asylum.

175. State Charities. The state further provides for its less fortunate citizens by maintaining an asylum for feeble-minded women at Newark, for feeble-minded children at Syracuse, a custodial asylum at Rome for idiots, the Craig colony for epileptics at Sonyea, a hospital for crippled and deformed children at West Haverstraw, and a hospital for incipient pulmonary tuberculosis at Ray Brook. These institutions are in charge of boards of managers appointed by the governor, usually with the consent of the senate. These boards are responsible to the state board of charities. The state constitution, Article VIII, provides that the board shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional, or reformatory character. Commitments to these institutions are made in accordance with state law.

176. State Reformatories. One of the great problems of the state is to deal justly with those who violate its laws. Frequently first offenders, while their offence is serious, will never repeat the crime or any other. To deal with such persons, many of whom are comparatively young in years, as with hardened offenders or to put such into the same prisons with seasoned criminals would be a manifest injustice to the state as well as to the individual. The

object of criminal law and punishment is the correction of the fault in the offender; that is to say, the reformation of the criminal. If the criminal is reformed, the state is protected and life and property become permanently secure. If the offender is not reformed, the state is protected just so long as the offender is locked up, and when he is again given his freedom he returns to prey upon life and property. With something like this in view, the state has established reformatories at Elmira and Napanoch for men, and at Bedford and Albion for women, an agricultural and industrial school for boys at Rochester and one for girls at Hudson. These institutions are governed by boards of managers appointed by the governor, usually with the consent of the senate. The executive officer in charge of each institution is called a superintendent, who is assisted by a corps of helpers, teachers, etc. In these reformatories schools are maintained, the trades taught, and some have farms connected with them.

177. State Prisons. In the treatment of our "criminal class," real progress has been made. The cruel and inhuman treatment, which not infrequently resulted in the death of these "wards of the state," has in the main passed into history. So too has passed the striped prison garb, the shaving of one side of the head and face only, and similar badges of degradation. More and more will be taught to these people, to many for the first time, this lesson; namely, that the world owes no one anything but a chance to earn an honest living, to do a day's work, and enjoy the full fruits of one's labor. More and more will be taught the lesson of economy as a part of prison life, that men may earn a wage there by honest actual labor which

has a market value, receive their full pay for such, and with it pay for their clothing, food, and shelter, the balance to be placed to their account and turned over to them with savings-bank interest when their terms have expired, and all to be done while attending excellent schools, learning a trade or the elements of a profession. Profitable employ-

A "Mess Room" in one of the State Prisons

ment under agreeable and healthful conditions and surroundings will do more to reduce the "criminal class" than all else beside. To accomplish this reformation in the criminal and therefore afford permanent protection to life and property in lieu of the present plan of temporary protection, our criminal classes must be placed in the keeping of highly educated humanitarians, men and women

who have made penology a careful study, and who are neither tyrants nor sentimentalists, but those whose business it is to study this great problem scientifically and whose training has fitted them for it. However, while this day is sure to come in the evolution of society, it has not yet arrived, and while many steps in the right direction have been taken, there is yet a long road to travel. At present we have state prisons at Dannemora and Matteawan for the criminal insane, and regular prisons at Sing Sing, Auburn, and Clinton. Each prison is in charge of a warden, and there is a resident physician and clergyman. The state superintendent of prisons is appointed by the governor, as is also the state prison commission of seven members. The state maintains a probation commission and a board of parole.

178. Other State Activities. By no means has the list of the state institutions and activities been exhausted. A few of the remaining are here mentioned: Cancer laboratory at Buffalo for the study of this disease; Indian school at Iroquois; Soldiers and sailors home at Bath; Watkins Glen, Niagara Reservation at Niagara Falls, and Fire Island state park for pleasure seekers; national guard (militia); Onondaga salt springs at Syracuse; Indian reservations at Allegany, Cattaraugus, Tonawanda, Tuscarora, and for the tribe of Onondaga, the tribe of the St. Regis Indians and the Seneca nation; state board of pharmacy, board of embalming examiners, water-supply commission, department of weights and measures, state printer, canal board, and numerous other boards and commissions.

QUESTIONS ON THE TEXT

1. Upon what grounds is the state justified in educating teachers for the public schools at state expense through normal schools?

2. What is the object in the state maintaining an agricultural and veterinary college? Is this justifiable?

3. What is the object of sending people to prison? Is the object the same in sending people to reformatories?

4. Give reasons why an unreformed criminal should not be given his liberty. Is this an argument against a definite term sentence?

5. Why should the state care for the criminal insane in separate institutions for the insane? Is one reason humanitarian?

6. Is the state justified in educating the blind and other deficients? If so, on what grounds?

7. The federal government pensions all soldiers and sailors, who were honorably discharged, who served in the civil war. Why should the state establish a home at Bath for our soldiers and sailors of the civil war? Discuss fully.

TOPICS FOR DISCUSSION

Resolved: That a farm of at least 500 acres and a school of agriculture and mechanic arts shall form a part of the equipment of all state prisons and reformatories, in which the prisoners may receive instruction and perform all manual labor connected therewith.

Resolved: That the state will be better served by a biennial session of the legislature limited to ninety days.

Resolved: That a tax of not less than one percent upon the gross earnings of corporations operating within the state should be paid into the state treasury for the support of the state government.

Resolved: That a graduated inheritance tax should be placed upon all estates above $100,000 as follows: from $100,000 to $500,000 five percent; from $500,000 to $1,000,000 ten percent; from $1,000,000 to $2,000,000 twenty percent, and fifty percent for all estates exceeding $2,000,000, the funds thus obtained to be used equally in defraying the expenses of the state government, the improvement of prison facilities, good roads, high school and college education.

CHAPTER XV

SUFFRAGE: HOW AND WHEN EXERCISED

179. Citizenship. Citizenship in a state depends upon citizenship in the United States. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States *and of the state wherein they reside*, as provided by the fourteenth amendment to the federal constitution. Any foreigner, twenty-one years of age, a male, may become a naturalized citizen of the United States, and, therefore, of this state by (1) living five years in the United States continuously, one of which years must be lived in the state where naturalization is sought; (2) by making oath before a court of record — that is, a court having a clerk and seal — at least two years before being admitted to citizenship, that it is his intention to become a citizen and to renounce forever his allegiance to any foreign state or ruler and all titles or orders of nobility which he may possess; (3) by making a formal petition in due form; and (4) by making oath to support the constitution of the United States. In addition to all this, the judge granting the certificate of citizenship must be convinced by at least two witnesses that the applicant is desirable and a believer in the principle of government as outlined in the federal constitution.

180. Suffrage a Privilege. The right to vote is not a civil, that is, personal right, belonging to every one who

is a citizen. The right to vote is purely a political right, wholly within the power of the state to extend or withhold from any class of citizens. The United States constitution establishes a uniform standard for citizenship, but each state regulates the matter of voting, and, therefore, we have as great variety of requirements for voting as the several states exhibit in other matters of legislation. If it is true that "every fault of popular government has its origin in the fault of the voter," then it is only by the expression of right character through the ballot from the primary to the last vote for president that "liberty, whose unvarying price is eternal vigilance, be maintained." In early colonial days in New England, the right to vote was extended to church members only; later, the right was extended to all property owners; and still later, to all white male citizens over twenty-one years of age. In five of the western states (Wyoming, Colorado, Idaho, Utah, and Washington) the right to vote has been extended to women on the same terms as to men. The safeguarding of the ballot is historic and right. In the hands of the vicious and ignorant, it is a weapon for the destruction of human liberty; in the hands of the thoughtful and patriotic, it is the cure-all for most of the ills to which government is heir. Each year it becomes more of an honor to be an American citizen, as evidenced by the hundreds of thousands who annually come to this country from other shores, and each year we should do our part toward making our inheritance better.

181. Who may Vote. Any male citizen at least twenty-one years of age, unconvicted of bribery or other infamous crime, who has been a citizen of the United States for

This ballot should be marked in one of two ways with a pencil having black lead.

To vote a straight ticket, make a cross X mark within the circle above one of the party columns.

To vote a split ticket, that is, for candidates of different parties, the voter should make a cross X mark before the name of each candidate for whom he votes.

If the ticket marked in the circle for a straight ticket does not contain the names of candidates for all offices for which the elector may vote, he may vote for candidates for such offices so omitted by making a cross X mark before the names of candidates for such offices on another ticket, or by writing the names, if they are not printed upon the ballot, in the blank column under the title of the office.

To vote for a person not on the ballot, write the name of such person. under the title of the office, in the blank column.

Any other mark than the cross X mark used for the purpose of voting, or any erasure made on this ballot, makes it void, and no vote can be counted hereon.

If you tear or deface or wrongly mark this ballot, return it and obtain another.

REPUBLICAN TICKET.	DEMOCRATIC TICKET.	INDEPENDENCE LEAGUE TICKET	SOCIALIST TICKET.	PROHIBITION TICKET.	INDEPENDENT NOMINATIONS. SOCIALIST LABOR TICKET.	BLANK COLUMN.
For Governor HENRY C. STIMSON	For Governor JOHN A. DIX	For Governor JOHN J. HOPPER	For Governor CHARLES H. ROSSELL	For Governor T. ALEXANDER M. SCROLL	For Governor FRANK K. TAMANEND	For Governor
For Lieutenant Governor, EDWARD SCHOEPFLIN	For Lieutenant Governor THOMAS F. CONWAY	For Lieutenant Governor WILLIAM RANDOLPH HEARST	For Lieutenant Governor GUSTAVE A. STRIPPEL	For Lieutenant Governor CALVIN M. CAGEY	For Lieutenant Governor JAMES T. HUNTER	For Lieutenant-Governor,
For Secretary of State, SAMUEL S. SOMMO,	For Secretary of State EDWARD LAUTERBY	For Secretary of State THOMAS J. SCULLY	For Secretary of State MORRIS H. TIDEMAN	For Secretary of State P. HORACE GILLETT	For Secretary of State HENRY REPP	For Secretary of State,
For Comptroller JAMES THOMPSON,	For Comptroller WILLIAM SOHMER,	For Comptroller ARNOLD B. McKAY	For Comptroller C. A. CHUM	For Comptroller BERNARD TAUSKY	For Comptroller CARL A. LUECKER	For Comptroller
For Treasurer THOMAS F. FENNELL,	For Treasurer JOHN J. KENNEDY,	For Treasurer WILLIAM IRVING BROOKS,	For Treasurer SYLVESTER BUTLER,	For Treasurer CHARLES J. CALL	For Treasurer WILLIAM A. WALTON	For Treasurer,
For Attorney General, EDWARD R. O'MALLEY	For Attorney General THOMAS CARMODY	For Attorney General ROBERT STEWART	For Attorney General HENRY L. JOSCELYN	For Attorney General FRANKLIN HALLWAN	For Attorney General LEWIS J. ALBITZ	For Attorney General,
For State Engineer and Surveyor, FRANK M. WILLIAMS,	For State Engineer and Surveyor, JOHN A. BENDEL,	For State Engineer and Surveyor, JAMES A. LEE,	For State Engineer and Surveyor WILLIAM HEITZEL	For State Engineer and Surveyor ALBERT W. PIERSON	For State Engineer and Surveyor JEREMIAH D. CROWLEY	For State Engineer and Surveyor,
For Associate Judges of the Court of Appeals IRVING G. VANN,	For Associate Judges of the Court of Appeals IRVING G. VANN,	For Associate Judges of the Court of Appeals REUBEN HOOKER LEON,	For Associate Judges of the Court of Appeals MORRITZ HOLT	For Associate Judges of the Court of Appeals ALFRED J. MANFREDI,	For Associate Judges of the Court of Appeals CHARLES F. HARK,	For Associate Judges of the Court of Appeals,
FREDERICK COLLIN	FREDERICK COLLIN	JAMES A. ALLEN	LOUIS C. BOUTON	GILBERT ELLIOTT	NO NOMINATION	
For Representative in Congress, JOHN W. DWIGHT	For Representative in Congress, ISAAC A. HIX	For Representative in Congress, DAVID GILBERT HITE	For Representative in Congress, CHARLES G. BRAWN	For Representative in Congress, FRANK D. WITTMEIER	For Representative in Congress, NO NOMINATION	For Representative in Congress,

THE ELECTOR MAY WRITE IN THE COLUMN BELOW UNDER THE TITLE OF THE OFFICE THE NAME OF ANY PERSON WHOSE NAME IS NOT PRINTED UPON THE BALLOT FOR WHOM HE DESIRES TO VOTE

SAMPLE AUSTRALIAN BALLOT USED IN NEW YORK STATE NOVEMBER, 1910

ninety days, a resident of the state for one year, of the county for four months, and of the election district for thirty days next preceding an election, may vote for any elective officer. A duly qualified voter may vote for all officers directly chosen by the people — national, state, county, town, city. If for any reason, such as a change of residence, he loses his right to vote for any, he does for all. Students, soldiers, sailors, travellers, etc., do not lose their right to vote because of their occupation, and may return to their homes just before any election and vote.

182. Party Government Recognized. A political party is a group of persons who hold the same general opinions upon public questions and matters of administration generally. Hence organization for the purpose of putting those beliefs into practice. We shall always have political parties. The state recognizes and to a considerable extent regulates them, and state law provides that every political organization casting a certain number of votes for governor (at present 10,000) shall be known as a political party. It also provides, in cities of the first and second class,[1] that the enrolment of party voters shall take place under the direction of the public inspectors of election, at the times and places provided for the registration of voters for the public elections. Party primaries in the same cities, to insure fairness, are also conducted under the direction of the same public inspectors. In order to prevent fraud at elections, all qualified voters residing in cities and villages of 5000 or more inhabitants are required to appear in

[1] Other cities, and villages of 5000 or more population, may, on formal request of a majority of the voters, or on request of the party committees, come under the provisions of this law. See Chapter 223, Laws of 1909, known as the "Election Law."

person and *register*, that is, give their names and addresses in full. These are written down in a book, each party keeping a correct copy. In rural districts registry lists are made out without requiring each voter to appear in person. For town and village elections no registration is required, unless these elections fall at the time of the general elections. Party workers see to it that their members attend to registration.

183. Elective Officers and Election Districts. For election purposes the state is divided into a great number of districts (about 4600 primary districts). Sometimes these districts are created solely for election purposes; sometimes divisions already existing for other purposes are used also as election districts. Certain officers are elected by the people of the whole state, so that for this election the whole state may be said to form a single election district. Officers thus chosen are the governor, lieutenant-governor, comptroller, attorney-general, secretary of state, treasurer, state engineer and surveyor, and judges of the court of appeals. The largest election districts within the state are the judicial districts, nine in number, for the election of supreme court justices (see map, p. 122). In addition to these there are thirty-seven congressional districts for the election of members of congress (see map, p. 81), fifty-one senatorial districts for the election of state senators (see map, p. 90), one hundred and fifty assembly districts for the election of assemblymen (see map, p. 99), two hundred and seven supervisory districts for schools, and about 10,592 common school districts. Besides these there are sixty-two counties in the state, which are used

also as election districts for the election of county officers; and these are subdivided into towns, or into towns, villages, and cities, each with its own officers to elect. Not all of these officers are voted for at any single election.

184. Time of Elections. Congress has fixed by federal law that the time for choosing members of congress in all states shall be the first Tuesday after the first Monday in November of the even numbered years (see Chapter XIX, p. 207), and this date has been adopted by the state for the general state election held annually. At this election are chosen, whenever necessary to fill offices about to become vacant, state and county officers, state senators and assemblymen, judges of the supreme court and of the court of appeals, members of congress, and presidential electors. Town, city, and village elections are held separately. Town officers are chosen at town meetings (§§ 21–22), which are required by law to be held the first Tuesday in February, unless the board of supervisors shall change the time.[1] Cities of the first and second classes are required to hold their election in the odd numbered years at the time of the general election in November, the object being to separate municipal from state and national elections. Cities of the third class and villages usually elect their officers at a separate election in the spring, although some cities of the third class have secured special legislation permitting them to hold their charter elections in November.

185. Election Expenses. A party's campaign fund is derived from voluntary contributions, which ought to be

[1] See Revised Statutes, p. 4089.

made only for patriotic reasons. Candidates and parties may incur legitimate expenses, as for travelling expenses, telegraph and messenger service, the distribution of circulars, the holding of public meetings. Large sums have been corruptly raised and corruptly spent in determining elections. To check this evil, the law now applies the remedy of publicity by requiring that all candidates, except for town and village offices, shall make statements of their election expenses; and that the treasurer of each political committee shall likewise make a statement of campaign receipts and expenditures. These statements are filed with the secretary of state and are open to public inspection.

186. Convention System of choosing Candidates. The candidates to be voted for at these various elections have been duly nominated by their respective parties some time before the election. In every election district each political party has its committee, whose duty it is to call a party caucus or primary before each election. At these primary meetings the party nominates its candidates for local offices, and, when necessary, chooses delegates for the county and assembly district conventions. Again, in each county and assembly district, the parties have their committees, whose duty it is to call a meeting of the delegates chosen in the primaries. These delegates in convention nominate candidates for county and assembly district offices, and, when necessary, appoint delegates to the congressional, senate, and state conventions. In each of these districts, again, there are committees whose duty it is to call the delegates for each district together, and the state committee calls the state convention. In these district

conventions, candidates for the state senate and for congress are nominated; while in the state convention, delegates to the national convention are chosen. Finally, in the national convention are nominated the candidates for the presidency and the vice-presidency.

187. Party Platforms. State and national conventions, in addition to the work of nominating state and national officers, draw up a set of declarations or principles called a *platform.* This platform is issued to the public, and sets forth the issues of the day which the party considers of chief importance, and defines the party's attitude concerning each. No such declaration is made in county or district conventions. In these conventions, however, resolutions endorsing the action of their party and its attitude upon questions of public importance are passed.

188. The Primary: its Importance. It will be seen, therefore, that the primary is the point of first importance, in as much as it sets in motion a series of events resulting in the nomination of candidates for all elective offices — town, city, county, state, national. It is at the primary that the individual counts most. In a country so large as ours, it is the only purely democratic meeting possible, the others being of necessity representative or delegated bodies. Whatever is to be done for the cause of good government must be done in the primary (see The Town Meeting, p. 14).

189. The Official Ballot. The party convention or primary having chosen its candidates to be voted for at the general election, their names must be filed with certain public officers designated by state law. If the nominations are for offices to be filled by the voters of the entire

state, such as governor or secretary of state, or by the voters of a division larger than a county, such as a congressional district, the names of the candidates must be filed with the secretary of state. Nominations for offices to be filled by the voters of a county must be filed with the county clerk or commissioner of election, of a city with the city clerk. Other local nominations may be filed with a town or a village clerk. Bodies of citizens not connected with any of the regular political parties may nominate candidates *by petition* as it is called. This is done by getting a certain number of voters to sign a paper naming a particular candidate. Thus the official ballot for election day is made up. This ballot is printed and distributed at public expense.

190. The Voting: by Ballot. All officers are chosen by ballot or by some method of secret voting, unless the law specifies to the contrary. The usual methods of voting are by means of the Australian ballot or of the voting machine. The voting places or polls are in charge of local officers known as inspectors of election. Where the Australian ballot is used, the voter is given a single ballot, or sheet of paper, upon which are printed the names of all the candidates who have been duly nominated. These names are arranged in parallel columns according to their respective political parties. Each column is preceded by the name of the party, the party emblem, and a circle. The voter takes this ballot to a booth (a small room). If he wishes to vote for all the candidates of his party (a straight ticket), he makes a cross with a "pencil having black lead" [1] in the circle at the head of his party's col-

[1] See election laws, latest edition.

umn. If, on the other hand, he desires to vote for candidates not named on his party ticket (that is, to vote a split ticket), he places a cross before the name of each person for whom he wishes to vote. Finally, if he wishes to vote for candidates whose names do not appear upon any ticket, a blank column is provided for the purpose where he can write their names. When he has marked his ballot, he returns it, properly folded, to the inspector, who first tears off the stub and then deposits the voted ballot in one box, the stub in another. The stub of the ballot has the same number as the name of the voter on the poll list; the ballot itself is not numbered. When a man has voted, his name is checked off from the registration list by the poll clerks.

191. Candidates: Primary System of Choosing. Another and later method for the choice of candidates in force in some states is known as the direct primaries election.[1] By this method the voter expresses his choice for the person whom he wishes to hold the office instead of choosing a delegate to go to a convention and do this for him. The object of this method is to keep the real power in the hands of the people, and to make more difficult corrupt practices in elections, since it is believed that it will be more difficult to corrupt all the voters than it would be to corrupt a very much smaller number of delegates. Under the direct primaries system, any person

[1] See *School Civics*, p. 322, footnote. Alabama, Illinois,* Iowa,* Kansas,* Kentucky, Louisiana,* Mississippi, Missouri,* Nebraska, North Dakota,* Oklahoma, Oregon,* South Dakota,* Tennessee, Texas, Washington,* Wisconsin,* now have mandatory, state-wide, primary elections. In those states marked thus (*) an advisory vote on United States senators is also taken amounting practically to a choice.

desiring to become a candidate for any office may do so and have his name printed upon the official ballot providing he secures the requisite number of signatures endorsing his candidacy. This number varies with the different offices; for example, it would take a larger number of signatures to endorse a man for the office of senator than it would for county clerk. Under the convention system a person desiring to become a candidate for any elective public office must be able to control a majority of the delegates. The legislature of 1910 gave considerable attention to several direct primaries' bills, and Governor Hughes advocated direct primaries for all elective officers during his four years as governor.

192. Voting by the Machine. The method of voting by the machine is very similar to that of voting by ballot. The voter enters a booth, which is a part of the machine. On one side is a series of levers, each at the top of the column of names to be voted for. In fact, the face of the machine resembles the blanket or Australian ballot, with the exception of the circles at the head of the columns. If a person wishes to vote a straight ticket, he simply pulls down the lever at the head of his party's column and leaves the booth. If he wishes to vote a split ticket, he pulls down any one of the levers at the top of the columns and proceeds to manipulate the little indicators opposite the names so that they point to the names of the candidates who represent his choice. If he wishes to vote for candidates whose names do not appear in any column, a blank column is provided where he may write their names. By an ingenious mechanism the pulling down of one lever or one indicator locks all others, so that it is impossible to

vote more than one ticket or for more than one candidate for the same office. Upon the voter's leaving the booth, the machine registers his vote and the total vote, and sets all levers for the next voter.

193. The Counting. All voting must cease at five o'clock, and the votes must be counted by the inspectors, the room remaining open to the public meantime. The chairman of the board of inspectors immediately announces the result publicly, after which three certified copies are made, specifying the number of votes cast for each county and each state officer.[1] One of these certificates is sent to the supervisor, one to the town or city clerk, and one to the county clerk, together with the stubs and the unvoted ballots. After six months the voted ballots are destroyed. The supervisors of the county meet on Tuesday immediately following election, and, as a county board of canvassers, ascertain, from the reports sent in by the towns, who have been elected to county offices and the vote of the county for state offices. The supervisors make three certificates stating the results of the returns from their counting, and send one to the governor, one to the secretary of state, and one to the comptroller. The secretary of state summons the attorney-general, the state treasurer, the comptroller, and the state engineer, and surveyor to meet him in Albany on or before December 15. This body constitutes the state board of canvassers. At this meeting the county returns are carefully gone over and the result of the voting for state officers is officially an-

[1] No certificates are made for town, city, village, or school elections held at a different time than the general election. New York city acts under special law.

nounced. A plurality only, not a majority, is necessary for election to any office.

QUESTIONS ON THE TEXT

1. Who are qualified to vote in this state? To what extent are women permitted to vote?

2. Give the constitutional qualifications of a voter, and show the importance of these qualifications.

3. What are the essential provisions of the constitution in regard to bribery of voters and bets on the result of an election?

4. Give the substance of the provision of the constitution regarding registration of voters. Give reason for this provision.

5. When is the general election held in this state? Mention the chief provisions for securing an honest ballot.

6. What national and state officers will be chosen the coming November election? Give complete list.

7. Describe the process of choosing a governor from the primary to the final result.

8. What are the advantages of the present mode of voting in this state over that which formerly prevailed? What are the disadvantages?

9. Explain what is meant by the terms "blanket ballot" and "paster ballot."

10. Describe the blanket (Australian) ballot. What are the essential advantages of its use?

11. State the essential features and the purpose of the primary law enacted by the legislature in 1898.

12. State the argument for and against mandatory, state-wide, primary elections for all officers in cities, towns, counties, and state, including congressman, and an advisory vote (nothing else could be done until the United States constitution is amended), for United States senators.

CHAPTER XVI

STATE FINANCES

194. State Budget. It will be seen from a study of the activities of the state, the various administrative departments, boards, and commissions that the state is very much in need of funds to conduct its business. From an estimate furnished by each of these departments and activities, the legislature determines the amount of money needed to conduct the state's business for the year. This is called a budget and the appropriations bill goes into detail specifying the amount of salaries, travelling expenses, furniture, general maintenance, etc., concerning the state departments and institutions. This bill is enacted into law.

195. Sources of Revenue. The state has various sources of revenue. The principal sources and their relative values are taxes upon corporations amounting to $8,671,-920.20 in 1909, upon transfer tax amounting to 7,368,-995.41 in 1909, liquor tax amounting to $9,356,318.63 in 1909, stock transfer tax amounting to $5,355,346.16, mortgage tax amounting to $1,844,821.45, and the organization tax amounting to $207,535.45. All property may be taxed by the state unless exempted by state law, but for several years there has been practically no direct state property tax other than that which is required to meet the state debt. New York's location makes it a very desirable base for corporate activity, and

since these corporations enjoy protection and benefits from the state laws the state feels that they should contribute to the expenses of the government. It should be understood, however, that such payment of legitimate taxes is not to give such corporations any advantage in administrative or legislative matters.

196. Apportionment of Taxes. After the state has decided upon the amount needed for the year, and the county equalization of assessed valuation has been completed by the state board of equalization, the comptroller apportions to each county its share of the state tax and certifies the same to the board of supervisors in each county. The board of supervisors has previously acted as a county board of equalization in equalizing the assessed valuation of each town. To the state tax is added the necessary county tax, which total tax is divided among the towns and cities. To the town's or city's share of the state and county tax is added the town or city tax, and this grand total is the sum to be raised. The total assessed valuation of property forms the *base*, the tax to be raised forms the *percentage;* dividing the percentage by the base gives the *rate* of the taxation, or the sum to multiply each person's assessment by to determine the amount of his tax. When the total tax is collected, the superintendents of highways receive the moneys voted for the improvement of roads and bridges, the superintendent of the poor the moneys voted for the care of the poor, the supervisor the money for the town expenses, the city treasurer the money for the city government, and the balance is turned over to the county treasurer. The county treasurer pays over to the comptroller the state's share of the money thus

received, and from the county's share such charges against the county as have been duly authorized. The comptroller and the county treasurer may sell real property on which the taxes are unpaid, and the local authorities in cities may do the same for the collection of unpaid city taxes. If the delinquents pay their taxes and the costs involved in the sale, they may recover their property.

197. Tax Districts. The state is divided into tax districts. These districts are usually the same as a town or city as to territory. In each of these districts three assessors are elected by the people if the district is a town, and may be elected or appointed in a city. These assessors place a value upon all real property — houses and lands — and upon all personal property, that is, movable property, if the amount can be ascertained. This valuation is written down in a book opposite the owner's name, and this list of names and property values constitute the *assessment roll*. If any person is dissatisfied with the value assigned his property, he may appear before the assessors on *grievance* day, a day set for the purpose of adjusting differences, and try to get a satisfactory valuation by *swearing off* his assessment; that is, by making oath that he has been over-assessed. If he cannot get satisfaction in this manner he may appeal to the board of supervisors for their decision. The assessment roll when completed is sent to the town or city clerk. When the board of supervisors meet in annual session, the assessment roll of each tax district is taken before the board and examined. When examining the assessment rolls, the board of supervisors acts as a *county board of equalization* and has power to change the assessed valuation of the real property of

any tax district with a view to producing a just relation of assessment in the several districts. The board has, however, no authority to change the total assessment of the county. In much the same manner the *state board of equalization* meets annually at Albany to adjust the balance between county assessments, working from data furnished by the state tax commissioners, who are in a sense state assessors.

198. Tax Defined. A tax is a sum of money or definite service lawfully taken from the people by the government, federal, state, county, or local, for its support. This right of the state is called eminent domain, which means that the state reserves to itself the right to appropriate private property for the public good after giving a just compensation. In as much as we choose the officers who levy our taxes, and in as much as we determine the kind of government we want and the officers to administer it, we ought cheerfully to pay our taxes, which is a kind of insurance paid for the security of our persons and property and education.

QUESTIONS ON THE TEXT

1. How is the state budget made up? How is it authorized?

2. Mention the sources of the state's revenues for current expenses. How are taxes distributed after collection?

3. For what purpose does the state lay a direct property tax? May it lay a property tax for current expenses of government?

4. After the state budget has been determined, who determines what each county's share is? To whom does he report?

5. How is the tax rate determined? What is a tax?

6. What is a tax district? Why are taxes necessary?

7. What are the duties of the state board of equalization? the county board of equalization? By what other name is the county board called when doing other work?

	Town	Village	City	County	State	Nation
LEGISLATIVE	Town Meeting	Board of Trustees	Common Council or B'd of Aldermen	Board of Supervisors	Legislature	Congress
EXECUTIVE	Supervisor Town Clerk and Collector	Village Pres. Clerk, Treasurer	Mayor City Clerk and Treasurer	Sheriff County Clerk and Treas.	Governor Sec'y of State Comptroller and State Treas.	President Sec'y of State Sec'y of Treas.
						Sec'y of War
			City Att'y	District Att'y	Att'y-Gen'l	Att'y-Gen'l
		Village Engineer	City Engineer		State Eng. and Surveyor	Other Cabinet Members
						Other Departm'ts
			Civil Service Com.		Civil Service Com.	Civil Service Com.
	Overseer of Poor		Supt. of the Poor	Supt. of the Poor	Com's of Charities	
	Supt. of Roads	Street Commis'r	Street and other Commissioners	" " Roads B'd of Supervisors	Railroad Com'n B'd of Equalizat'n	
	Assessors	Assessors	Assessors			
	School Trustees	B'd of Education	B'd of Education	Dist. Supt's Schools	Regents and Comr. of Education	Interstate Commerce Commission
			B'd of Pub. W'ks		Supt. of Pub. W'ks	
JUDICIAL Appellate Jurisdiction				County Court	Court of Appeals App. Division of Supreme Court	Supreme Court Circuit Court of Appeal
	Justices' Courts	Police Court	City Courts	County Court	Supreme Court	Circuit and District Courts
Original Jurisdiction					Court of Claims	Court of Claims
				Surrogate's Court Coroner's Courts		

PART III. THE FEDERAL GOVERNMENT

CHAPTER XVII

THE CONSTITUTION: ITS FORMATION AND ADOPTION

199. Condition of Affairs under the Articles of Confederation. The course of events from 1781 to 1787 gave indisputable proof of the impossibility of government under the articles. So long as the struggle with the mother country lasted, the states could not help seeing that their only safety lay in union; and they were following the dictates of the merest self-interest in sending to congress their ablest men and in granting to that body, however grudgingly, the necessary means for conducting the government. As the fierceness of the struggle abated, however, the necessity for union was no longer so keenly felt. State interests loomed larger and larger; federal interests dwindled. The most distinguished statesmen no longer sat in the federal legislature. Their talents were demanded at home for the solution of difficult problems of state government; so that the national legislature, given by the articles no means of providing for its own needs and left wholly dependent upon the good-will of the states, soon found itself deprived of even such power of persuading the states as it had possessed through the pressure of the war and the personal influence of its members.

200. Attitude of the States. Gradually the states, having withdrawn from the service of the federal government its best ability, assumed toward it, if not an attitude of actual defiance, at best one of distrust or indifference. More than

House Extension — THE CAPITOL AT WASHINGTON — Senate Extension

once, whether through indifference or a more active sentiment, they made it impossible for congress to proceed to business at the proper time by failing to send delegates from enough states to transact important business or to settle important questions. National appeals for money many of them simply disregarded, so that between 1782 and 1786 congress obtained only about one-sixth of the amount asked for. Threats of secession were heard from more than one quarter, and even overt acts of defiance were not unknown.

201. The Feeling between the States was no better than that between the national government and the states. Questions of trade involved them in continual quarrels. New England sought to secure a virtual monopoly of the carrying trade by demanding the exclusion of British vessels, a demand to which the southern states would not accede. States without seaports were forced to pay tolls to their more fortunate neighbors through whose ports their goods were received. Interstate tariffs grew up wherever conditions favored them, and tariff wars provided a constant source of irritation. Between the east and the west, also, there was a clash of interests. The east desired commercial intercourse with Spain and the Spanish colonies, which that country was willing to grant in return for the surrender by the United States of the right to free navigation of the Mississippi, which now flowed for two hundred miles through Spanish territory; and a considerable portion of congress was willing to negotiate a treaty on this basis. To this surrender, however, the people of the west, particularly those of Kentucky and what is now Tennessee, were unalterably and vehemently opposed. Bitter discussion between east and west followed, and threats of secession were

heard on both sides; but the project was finally abandoned. Even within the states troubles were rife. Financial distress, which large issues of paper money had only intensified, was everywhere apparent, and was leading in some cases to armed rebellion on the part of the debtor class.

202. The General Government Helpless. Meantime the general government, compelled to stand helplessly by, alike incapable of relieving the internal distress of the states, of adjusting interstate disputes, or of extricating the nation from its difficulties, was regarded by foreign nations with scorn or indifference. It was not without justification that the French minister wrote in 1784 that there was no general government in the country; nor was it strange that the commission appointed that year to conclude treaties with foreign nations and consisting of men so able and persuasive as John Adams, Franklin, and Jefferson, should have been able to induce only one foreign country to enter into treaty relations with the confederation. By 1786 the feeling had become general that nothing short of a thorough-going revision and amendment of the articles of confederation could remedy the existing evils.

203. Suggestions for Amendment. The suggestion that the articles be amended was by no means new. In 1781, even before all the states had ratified them, it had been proposed that congress should be given power to raise revenue by levying import duties to the extent of five percent *ad valorem*. The proposition was discussed for a year, but was finally defeated by the refusal of Rhode Island to agree to the arrangement. In 1783 the project was revived and a similar proposition was made, but with more limitations upon congress, only to meet defeat again, this time at the hands of

New York. Two years later Massachusetts instructed her delegates in congress to propose a general revision of the articles; but nothing came of this suggestion, and the convention which finally met for that purpose in 1787 and ended by framing an entirely new constitution, originated in a different way.

204. Origin of the Constitutional Convention. The constitutional convention grew out of an attempt on the part of a few of the states to reach some sort of agreement in commercial matters. In 1785 a commission from Maryland and Virginia met at Alexandria for the purpose of adjusting, if possible, the differences between those states in regard to the navigation of the Potomac River and the Chesapeake Bay. Before the commission broke up the Virginia delegates proposed that a similar commission composed of delegates from all the states should meet at Annapolis for the purpose of discussing trade relations throughout the country. The proposition was favorably received, and the following year, 1786, occurred the Annapolis convention.

205. The Annapolis Convention. When the delegates assembled at the appointed time, it was found that representatives were present from five states only, though a few others were on the way. With so incomplete a representation of the confederation it was useless to attempt to proceed with the business for which the convention had been summoned, but such discussions as occurred revealed the existence of a general sentiment in favor of the revision of the articles of confederation. Accordingly, without awaiting the arrival of the tardy delegates, those present before adjourning passed a resolution recommending a convention of delegates from all the states "to devise such further pro-

visions as shall appear to them necessary to render the constitution of the federal government *adequate to the exigencies of the union.*" This resolution was transmitted to congress and to the state legislatures; but it was not until five states had already appointed delegates to the new convention that congress approved it and recommended its adoption by the states. Thereupon the rest of the states, with the exception of Rhode Island, promptly adopted the recommendation of congress and appointed their delegates.

206. The Constitutional Convention. The 14th of May, 1787, had been fixed upon as the day, and Philadelphia as the place of meeting for the new convention; but it was not until May 25 that delegates had arrived from a sufficient number of states to enable the convention to organize for its work, and two months more elapsed before all of the twelve states that finally sent delegates were represented. Rhode Island alone took no part in the convention. In that state the governor and the upper house of the legislature were in favor of sending delegates; but the assembly, made up largely of men without education and of narrow political views, who were moreover fearful of the effect of the convention upon their financial policy of wiping out all debts by means of paper money, refused to send representatives. The convention as finally constituted consisted of fifty-five members, among them the ablest and most distinguished statesmen of the time. Together they made up a body that has rarely been equalled in intelligence, ability, patriotism and political sagacity. As has nearly always happened in the case of political bodies chosen at critical junctures in our history, the convention was strongly representative of the wisely conservative element in the country. No true patriot

could have anything to fear in entrusting his political interests to such men as figured most prominently in the proceedings of the convention.

207. Influence of Washington. Easily foremost, of course, was Washington, president of the convention, cautious, sagacious, rich in experience, utterly free from local prejudice. His position as presiding officer naturally precluded his taking part in the debates; but it has been said of him that, through the power of his personality, he had the greatest influence on the total result of any man in the convention. Unquestionably the fact that he approved the constitution assisted in no small degree in securing for it the ratification of otherwise doubtful states.

208. Hamilton and Madison. Of those who engaged actively in the debates of the convention, the two most prominent and almost equally influential characters were Hamilton and Madison. In spite of the fact that they were young men (Hamilton was but thirty, and Madison six years older), both had already rendered political service as members of congress, and Hamilton had been one of the delegates to the Annapolis convention. Hamilton's keen insight into the principles of government, combined with a remarkable power of logical, straightforward reasoning, stood him in good stead in the debates of the convention. His greatest service in the work of that body was his successful insistence upon the absolute necessity of creating an efficient national government, even though it might involve a very considerable curtailment of the powers of the states. Madison was even more active, if not more influential, in the convention than his colleague. He was one of the few, destined finally to become the majority, who believed that no satis-

factory amendment of the articles of confederation was possible, and that the only thing to do was to throw them overboard and frame a new constitution. To this proposition it was objected, reasonably enough, that the assembly in acting upon it would be exceeding its authority, since it had been given power only to revise the articles of confederation; and in furnishing convincing answers to objections of this type he rendered most efficient service. It was Madison, also, who drafted the scheme of government known as the Virginia plan, which was to become the basis of the constitution as it was finally adopted. Nor did the work of these two young men end with the adjournment of the convention. Through the series of political essays known as The Federalist, written for the purpose of explaining and defending the constitution after it had been submitted to the people for ratification, they did yeoman's service in securing its adoption.

209. Franklin. Scarcely inferior in influence, though much less active in debate, was the venerable Franklin, now in his eighty-second year. For half a century he had had intimate knowledge of public affairs; for a quarter of a century he had represented his country or a portion of it at foreign capitals. Twice had he drafted a plan of union and a scheme of government for the colonies, neither of them, to be sure, destined to be put into operation — one the plan adopted by the Albany convention in 1754, but rejected by the colonies; the other the scheme considered by the continental congress a year before the articles of confederation were drafted, but never acted upon. It was his particular task in the convention to pour oil on the troubled waters. When the debate became too bitter or too personal, his

ready wit restored everybody to good humor, and more than once his tact prevented differences of opinion from becoming irreconcilable disputes.

210. Other Prominent Delegates present were George Mason and Edmund Randolph of Virginia; John Dickinson of Delaware; James Wilson, Robert and Gouverneur Morris of Pennsylvania, to the last of whom the constitution mainly owes the admirable clearness and simplicity of its language, which has made the work of interpretation so much easier and surer; Roger Sherman of Connecticut, who had been a member of nearly every congress; Elbridge Gerry of Massachusetts; Rufus King of New York, the author of the prohibition on the states to pass laws affecting the obligation of contracts; Paterson of New Jersey (afterwards governor, 1791–1793); and the two Pinckneys and John Rutledge of South Carolina. These were the most distinguished members of the assembly, but all were men of ability and experience. Of the fifty-five present, eighteen were at the same time members of congress; and there were only twelve who had not at some time sat in that body.

211. Work of the Convention. As we have already seen, the organization of the convention was delayed until May 25 by the lack of a quorum. Once organized, however, the work proceeded without interruption for four months, daily sessions being held until the 17th of September, when the engrossed copy was signed and the convention finally adjourned. The work throughout was carried on behind closed doors — wisely, since, had the questions under discussion been known, the pressure of public opinion upon the delegates would probably have made agreement impossible. It was not until long afterwards, when the very full notes

kept by Madison of the debates of the convention were printed, that the difficulties it had surmounted became known.

212. Difficulty of the Task. In some respects the task before the framers of the constitution was peculiarly difficult. "The establishment of a constitution in a time of profound peace, by the voluntary consent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety," wrote Hamilton; and many of his contemporaries shared his feeling. In the first place there had been no overwhelming public sentiment in favor of the calling of the convention, nor was there any profound belief that it would accomplish anything. Then, too, within the convention itself there was a strong feeling that it had no power beyond that of revising the articles of confederation; and not a little argument was needed to induce the assembly to undertake the framing of a new constitution. That question once decided, the convention found itself face to face with a peculiar condition of affairs. Its task was not the comparatively simple one of devising a scheme of government for a single unitary state, in which the central government should be the source of power for all minor political divisions; nor had it on the other hand to deal with a simple confederation, in which the component states were still sovereign and independent with full power at any time to withdraw from the union. The course of events during the revolution had unquestionably established a nation with a life of its own, yet it had left the integrity of the states untouched. The states were still free political agents, however strongly public necessity might urge them to form a national union. "We were neither the same nation nor different

nations," said Gerry. In short, the task before the convention was that of framing a constitution for the first great federal state in history. Just how this was to be done no one saw clearly at the opening of the convention. Among the members of the assembly the most diverse opinions were held as to what should be the character of the new government. Not a few contended for the maintenance of the existing form of government with only such revision of the articles of confederation as experience had shown to be absolutely necessary, *i.e.*, they advocated, if not the extreme state rights doctrine, at least as great a degree of state sovereignty as was at all compatible with orderly government. A few, notably Hamilton, advocated the establishment of a strongly centralized national government, in which the states should be shorn of all their sovereign power. The majority, however, hoped for the establishment of a moderately strong central government, with enough curtailment of state prerogatives to render the general government thoroughly efficient.

213. Plans Submitted. The real work of the convention began on the 29th of May when Edmund Randolph of Virginia submitted a plan of government, principally the work of Madison, consisting of fifteen propositions, most of which were finally embodied in the constitution. This plan is known as the Virginia plan. On the same day (May 29th) Charles Pinckney of South Carolina presented another plan very similar in its provisions to that of the Virginia delegation but more detailed. This received little attention. The interest of the convention centred upon the Virginia plan and its principal opponent the New Jersey plan, introduced by Paterson of New Jersey, and

expressing the wishes of the smaller states. The Virginia plan provided for a government to consist of the three departments — executive, legislative, and judicial — the legislature to consist of two houses, the lower elected by the people, the upper by the lower from candidates nominated by the state legislatures. In both houses representation was to be based on free population. Congress was also to choose the executive and the judiciary. This plan unquestionably gave the control of affairs into the hands of the larger states, and it met with fierce opposition on the part of the smaller ones. They therefore agreed upon the series of resolutions introduced by Paterson. This plan proposed to continue the existing government but to give congress power to regulate commerce, to raise revenue, to establish a federal judiciary, and to enforce its enactments. While these plans were under discussion, Hamilton made a speech to the convention in the course of which he read a plan outlining a strongly centralized national government in which the states had little power. This has been called Hamilton's plan; but he knew, as he himself said, that it was very remote from the ideas of the people, and he probably intended only to outline more carefully his own views and the amendments he intended to offer at the proper time, rather than to submit a formal plan for the consideration of the convention.

214. The First Great Compromise. As the discussion of the two principal plans proceeded, it became evident that only a most liberal spirit of compromise could enable the convention to effect anything. Differences of opinion among the delegates were so wide as to be all but irreconcilable. More than once the convention seemed on the verge of dissolution, but each time some compromise was effected and

the work proceeded. The first great crisis came in the course of the discussion as to whether there should be a national or a federal government, and whether there should be equal representation of the states in congress or whether representation should be apportioned on the basis of population. Naturally the smaller states contended fiercely for equal representation. Finally one of the Connecticut delegates suggested a compromise, based on the system in use in the legislature of his own state, according to which there was to be equal representation of the states in the senate but representation apportioned on the basis of population in the house of representatives. To this the larger states agreed after some discussion, and thus the first great compromise of the constitution was effected.

215. The Second Great Compromise. This question as to the manner of representation in the two houses having been settled, another arose as to the apportionment of representatives in the lower house. The population of the southern states contained a large proportion of slaves possessed of no political rights. Ought they to be counted in determining the number of representatives from those states; and if counted for that purpose, ought they not to be counted also in apportioning direct taxes? Finally a compromise was effected upon this question also — the three-fifths compromise, as it is sometimes called — according to which five slaves were to be counted as equal to three white men, and direct taxes were to be apportioned in the same manner as representatives.

216. The Third Great Compromise also was made necessary by the existence of slavery and the slave trade. The real question at issue was whether or not the general gov-

ernment should be given control over commerce. The ill effects of allowing each state commercial independence had become evident under the articles of confederation, and the states engaged in general commerce desired its regulation by the general government. On the other hand, the states engaged in the slave trade, knowing the sentiment entertained against it at the north, feared that heavy losses might be entailed upon them by some prohibitory legislative act of the general government. A compromise was finally reached by which it was agreed that congress should be given control over commerce but should be forbidden to pass any act prohibiting the importation of slaves before 1808, though it might levy a tax of ten dollars each on all slaves imported. Of this last provision, however, congress never took advantage. It should not be supposed that these three were the only compromises of the constitution; it has been said of it indeed, that it was nothing but a series of compromises. These three, however, were of vital importance, since a failure to reach an agreement on any of these points would have resulted almost inevitably in the dissolution of the convention.

217. Ratification. In accordance with the last article of the new constitution providing for its ratification, it was submitted on the 20th of September, 1787, to congress, where it was subjected to criticism for eight days before it was sent to the state legislatures, to be by them in turn submitted to conventions chosen by the people of the several states. It was not until June 21, 1788, that the ratification of the nine states necessary to the establishment of the new government was secured. Thereupon congress made preparations for putting the constitution into opera-

tion; and the other states, finding themselves confronted with the alternative of joining the union or standing alone in the world, since the old government established by the articles of confederation had been annihilated, ratified one by one, Rhode Island holding out until the end of May, 1790.

218. Struggle over Ratification. Except in the smaller states, to which very considerable concessions had been made, ratification was nearly everywhere secured with difficulty. Had the matter been left to a direct vote of the people, taken all over the country on the same day, it is doubtful if it could have been secured at all. Fortunately, as Mr. Bryce has noted, "The conventions were composed of able men, who listened to thoughtful arguments, and were themselves influenced by the authority of their leaders."[1] Out of this struggle over ratification emerged the first two great political parties in the United States. The supporters of the constitution were called federalists; the opponents anti-federalists. The federalist party was in general the party of the moneyed classes — the public creditors, the merchants, the lawyers; the antifederalist the party of the debtor class, the advocates of paper money — in general the less wealthy portion of the community. The antifederalists objected among other things to the absence of a bill of rights in the new constitution; to the power of taxation given the national legislature; to the power granted to the federal judiciary; to the paying of congressmen out of the federal treasury, thus making them independent of the states; to the voting by individuals instead of by states in the national legislature; in short, to what they considered the too aristocratic, too centralized form of the new govern-

[1] Bryce, Vol. I, p. 27.

ment. On the other hand, the views of the federalist party found expression most ably and thoroughly through the series of remarkable political essays written by Hamilton, Madison, and Jay, and afterwards collected and published under the title of The Federalists. Their effectiveness in helping to secure ratification has been already mentioned. Other influences, too, were at work. The support of such tried and trusted men as Washington and Madison, the compromises made to different sections and interests, the example of other states — all had their effect upon doubtful states; but unquestionably the two most potent influences were the almost universal economic distress; and the dread of foreign powers, especially Spain and England, who were believed, perhaps not wholly without reason, to be only awaiting a favorable opportunity for absorbing the youthful nation.

219. Establishment of the New Government. As soon as the ratification of the necessary nine states was secured, congress passed an act providing for the establishment and organization of the new government. The first Wednesday in January, 1789, was designated as the day for appointing electors; the first Wednesday in February for assembling and voting for president; and the first Wednesday in March for "commencing the proceedings under the said constitution." It was not until April 1st, however, that a quorum was secured in the house of representatives and that body was organized; while in the senate a quorum was first present on April 6th. Thereupon the votes were counted and Washington was declared elected. Some further delay ensued, but finally on April 30 occurred the inauguration of Washington and the installation of the new government.

Library References. Macy, pp. 38–40; Hinsdale, pp. 82–116; Bryce, Vol. I, chap. iii; Fiske, 217–219; Channing, pp. 254–262, 270–275; Montgomery, pp. 214–218; Curtis, Vol. I, chaps. xv–xxxvi; Fiske, *Critical Period*, pp. 214–350; Roberts, Vol. II, pp. 446–447; Hart, chap. vi; Lalor, Article on the *Constitutional Convention;* Bancroft, Vol. VI, Book II, chap. viii, Books III–IV, Book V, chaps. ii–iii; Schouler, Vol. I, pp. 28–70; McMaster, Vol. I, pp. 390–399, 417–423, 436–502.

QUESTIONS ON THE TEXT

1. Describe the political conditions which made necessary the present constitution of the United States.

2. What evils was the United States constitution intended to remedy? Does it remedy those evils? Give reasons.

3. What state took the first step that led to the formation of the present constitution?

4. When and where was the constitution made? Name six objects stated in the preamble.

5. How was the constitution framed? Name the three great compromises of the constitution.

6. What differences of opinion existed between the framers of the constitution as to the powers of the federal government? What are these differences sometimes called?

7. What is meant by the statement: "The house of representatives represents the national idea; the senate represents the federal idea"?

8. State the provisions under which the constitution took effect.

9. The sessions of the constitutional convention were all executive, *i.e.*, the public was excluded from all meetings and the work of the convention kept secret until after final adjournment. Was this a wise thing to do? Why?

CHAPTER XVIII

THE CONSTITUTION: ITS ORIGIN AND NATURE

220. Its Origin. In regard to the originality of the constitution the most opposite views have been entertained. Mr. Gladstone's remark that it is "the most wonderful work ever struck off at a given time by the brain and purpose of man," has generally been construed, whether it was so intended or not, as an assertion of its originality. On the other hand, Sir Henry Maine says that it is "in reality a version of the British constitution" as it then was. Both these statements are misleading, though both contain an element of truth. As a matter of fact, the convention wisely based its work as little as possible upon untried theories, as much as possible upon experience. Only where colonial or state experience furnished no precedent did they risk an invention of their own. At the same time, there were in the situation before the convention some elements that were new, some problems for which the framers were compelled to devise new solutions. As for the British constitution, it unquestionably exercised a very considerable influence upon the framers of our constitution, but not directly, as Sir Henry Maine's remark implies. Rather, that influence came to them filtered, for the most part, through the channels of colonial, revolutionary or early national experience.

221. Origin of Special Provisions. Nothing could be truer than the oft quoted observation that nearly every pro-

INDEPENDENCE HALL, PHILADELPHIA

Here the Second Continental Congress met. Here the Declaration of Independence was signed. Here may now be seen the tables and chairs used at the time. And here rests the Old Liberty Bell

vision of the federal constitution that has worked well is one borrowed from some one of the state constitutions, nearly every one that has worked badly is one that the convention in the absence of precedents was obliged to devise for itself. It is interesting to note the source of some of these provisions. The separation of the government into three clearly defined departments, each independent of the others, had been characteristic of the colonies and after them of the states, the separation having been carried much further in America than in England. This characteristic reappears in an even more extreme form in the federal constitution. The division of the legislature into two houses, which has often been pointed to as a direct copy of the English system, is rather a copy of the plan almost universally in use in the states, though it is true that in character the two houses of the federal legislature correspond much more closely to those of Great Britain. Even the names senate and house of representatives were in use in several of the states. The president also, in whom some writers have thought that they saw a copy of the British monarch, corresponds much more closely in character and function to the governors of the states, some of whom were called presidents. In several states, too, the office of vice-president existed. Some half-dozen or more of the states also provided a method of impeachment.

222. Suggestions from the States. Certain states can be pointed to more especially as furnishing the suggestions for particular provisions. We have already seen that the different basis of representation in the two houses was suggested by the constitution of Connecticut. The veto power of the chief executive is found also in the constitution of Massa-

chusetts; the constitution of Delaware provided for the election of one-third of the senators every two years; the constitution of New York made provision for a census every seven years for the purpose of apportioning representatives; in Massachusetts and New Hampshire all revenue bills originated in the house of representatives. As a whole, the plan devised for electing the president was original; but even here the idea of an electoral college was derived from Maryland. Perhaps the truest prototype for the supreme court is to be found, not in the states, but in the judicial committee of the privy council in Great Britain. In fact, in the provisions of the constitution there was little indeed that was new. Such originality as there was lay rather in the attempt to frame a written constitution for a federation, and in the idea of submitting it to the people for ratification. "The work of the convention was a work of selection, not a work of creation, and . . . the success of their work was not a success of invention, always most dangerous in government, but a success of judgment, of selective wisdom, of practical sagacity — the only sort of success in politics which can ever be made permanent."[1]

223. Its Nature Different from the British Constitution. The character of the government established by the new constitution was something different not only from the government of Great Britain, upon which it had been in many respects indirectly modelled, but from that of the confederation as well. It is doubtful if the framers themselves realized how widely their work diverged from the mass of charters, statutes and usages that made up the unwritten,

[1] Wilson, p. 475.

highly flexible constitution of Great Britain. Perhaps the cardinal difference lay in the widely different character of the two great legislative bodies, parliament and congress. It should be remembered that the British parliament is and was then an absolutely sovereign body. It may make or unmake any law, change the constitution or the form of government at will, interfere with any of the "unalienable" rights of the citizen, do any one of a thousand things that it never does do. None of its acts can be "unconstitutional," for there is no higher authority competent to pronounce them so. In legal theory it is the nation and possesses all of the nation's powers. The congress of the United States is no such sovereign body. Neither congress, nor the president, nor both together can move one step beyond the strict limits assigned them by the constitution. Their powers are carefully enumerated, and any acts done in excess of them are simply void. Sovereign power, such as belongs, theoretically at least, to the British parliament can be exercised in the United States only by the whole body of the people acting in the manner prescribed by the constitution.

224. Different from the Confederation. Between the new government and the old government of the confederation there were also some radical differences. The new constitution did more than merely strengthen the general government so as to render it efficient. It changed a confederation into a federation, a league of states into a national state. The central government operated no longer upon the states merely, but upon the individual citizen as well.

225. Growth of Nationality. To be sure, the constitution as it existed in 1789 is not exactly the constitution as it is to-day. It has been developed by amendment, first of all,

but even more by interpretation and by custom; and practically all such development has been in the direction of nationalization, of consolidation. It must be admitted that the federation of 1789 was much looser, much more like the old confederation, than is the union of to-day. The public sentiment of the time, which was for the most part indifferent or lukewarm toward the union and jealously watchful of the prerogatives of the states, demanded such an interpretation of the constitution as would impose upon the general government the strictest limitations compatible with efficiency. As time passed, however, and the nation expanded, bringing into the union new states with no memory of a time when the states were all and the union naught; as a network of railroads gradually spread over the country, bringing the people together and making them more homogeneous; as war with other countries wakened a patriotism wider than state patriotism, and civil war finally swept away the last great barriers between sections — the sentiment of nationality slowly prevailed over local prejudices and attachments; and instead of the old jealousy and distrust of the general government on the part of the states, there grew up a realization of the fact that under the constitution state government and national government are mutually complementary, that neither usurps the functions of the other, that each is a necessary part of a single scheme.

226. Relation Between the States and the Union. The peculiar relation existing between the states and the national government is, perhaps, to the student of politics the most puzzling feature of our constitution. It will be remembered that under the articles of confederation the general government

was a government of delegated powers, these powers having been delegated by the states. Under the constitution the general government may still be said to be a government of delegated powers; but the source of authority is no longer the states but the people of the United States, though the people act through the state organization. Further we may say that, during the period of the confederation, the prevalent theory was that the union had been formed by a mere compact between the states, from which they retained the power of withdrawing at will. From the time of the adoption of the constitution to the civil war this theory struggled for supremacy against the opposing opinion that by the ratification of the constitution the states had become inseparable parts of the union, to which they had permanently surrendered their sovereignty. Practically, if not theoretically, this question was settled finally by the test of civil war; and since that struggle it is admitted that, whatever other powers the states may possess, they do not possess the power of withdrawing from the union (the right of secession). On the other hand, the states are not mere administrative divisions of the general government, nor are their powers delegated to them by the constitution. That instrument withholds from them certain powers; but such functions as they perform, they perform by an inherent, not a delegated authority. Within their own spheres they are completely independent, self-governing bodies. Their government "is subordinate only in the sense of being less than national in its jurisdiction."

227. Departments of Government. Besides this delicate adjustment of powers between state and national government so that both operate without friction even within

the same sphere, perhaps the most remarkable feature of our constitution is the strict separation of the three great functions or departments of government — the executive, the legislative and the judicial. By thus separating these three essential functions of government, making them independent and coördinate, and placing in the hands of each the means of defending itself against the encroachments of the other two, the framers of the constitution hoped to secure not only the rights of the individual citizen, but permanency for the form of government established. They tried to establish a complete system of "checks and balances," so that it would be impossible for any one department to overshadow the others and seize supreme power. For example, the executive power is vested in the president; but through his veto power he holds a very effective check upon the legislature, while his right of pardon gives him a share of judicial power also. Legislative power is vested in congress; but the house of representatives, through its control of the public purse, and the senate through its power of advice and consent in the matter of appointments and treaties, both act as checks upon the executive. Judicial power is vested in the supreme court and in such inferior courts as may be established; but through the power of the supreme court to pass upon the constitutionality of any law, the judicial department acts as a check upon the legislature. At the same time the greatest care was taken to make each department as independent as possible of the other two — in the case of the judiciary by making their tenure of office as secure as possible; in the case of the other two, by making them responsible, not to each other, but directly or indirectly to the people.

228. Stability of the Constitution. Contrary to the expectation of many at the time of its adoption, the constitution has proved itself extremely stable. The process of amendment provided by the instrument, while not so difficult as to be impracticable, as was the case with the articles of confederation, has nevertheless proved too cumbersome to be resorted to unadvisedly. As a result the constitution has been but little changed by amendment. Of the fifteen amendments that have been passed, the first ten, often called the bill of rights, were passed at one time and might almost be counted as one; while the last three also, relating as they do to the same subject and growing out of the civil war, are really a unit; so that it is perhaps not inaccurate to say that the constitution has really been amended but four times. It has undergone development, but it has been principally through the process of judicial interpretation and through custom. Mr. Bryce has said of it, "The constitution as a whole has stood and stands unshaken. The scales of power have continued to hang fairly even. The President has not corrupted and enslaved Congress; Congress has not paralyzed and cowed the President. . . . Neither the legislature nor the executive has for a moment threatened the liberties of the people. The States have not broken up the Union and the Union has not absorbed the States. No wonder that the Americans are proud of an instrument under which this great result has been attained, which has passed unscathed through the furnace of civil war, which has been found capable of embracing a body of commonwealths more than three times as numerous, and with twenty-fold the population of the original States, which has cultivated the political intelligence of the masses to a point

reached in no other country, which has fostered and been found compatible with a larger measure of local self-government than has existed elsewhere."

Library References. Harrison, chap. i; Macy, chaps. vi, xxxv; Dawes, pp. 46–59, 406–418; Bryce, Vol. I, chaps. ii–iv; Wilson, §§ 869–884; Hinsdale, chaps. xii–xv; Madison, *Journal of Constitutional Convention; Federalist;* Johnston, pp. 12–14; Curtis, Vol. II, chaps. i–ii; Channing, pp. 259–270; Fiske, *American Political Ideas*, pp. 57–100; Wilson, *Congressional Government*, pp. 1–57; Hart, pp. 133–135; Lalor, Article on *Constitution of the United States;* Woodburn, pp. 58–93.

QUESTIONS ON THE TEXT

1. Mention two governmental institutions that are derived from England.

2. Compare the constitution of the United States with the English constitution as to (1) origin, (2) form, (3) susceptibility to change.

3. What provisions of the constitution were taken from the various state constitutions?

4. Mention one respect in which the constitution of the United States differs from that of England. Compare the powers of parliament and congress.

5. Distinguish between confederacy and nation. What kind of government was that of the continental congress?

6. Show how the constitution changed the relations "from a league of states into a national state."

7. Into what three departments are the powers of the United States government divided, and why is this division made?

8. What is the source of the powers (1) of the United States government, (2) of the state governments?

9. What was the ordinance of nullification? Of what doctrine was it an expression? How has this question been finally settled?

10. Give Mr. Gladstone's opinion of the constitution.

11. Give the substance of Mr. Bryce's statement regarding the working of the constitution.

THE UNITED STATES SENATE CHAMBER

CHAPTER XIX

LEGISLATIVE DEPARTMENT: ITS ORGANIZATION

229. The Two Houses. In the United States, legislative power is vested in a congress consisting of two houses, called the senate and the house of representatives, the first chosen in such a way as to make it representative of the states — *i.e.*, representative of the federal idea; the latter chosen in such a way as to make it representative of the people as a whole — *i.e.*, of the national idea. In the constitutional convention there was almost unanimous agreement that the new congress should consist of two houses. The failure of the old congress of the confederation with its single house, the much more satisfactory experience of the states with their bicameral systems, and — most of all, doubtless — the faith of the convention in the efficacy of a system of "checks and balances," all tended to secure unanimity on this point. It was intended that each house should act as a check upon the other, thus preventing over-hasty or ill-advised legislation. We have already seen whence the names senate and house of representatives were derived, and how it came about that the basis of representation in the two houses is different (§§ 214 and 221).

230. Number of Members. In size the two branches of the legislature differ greatly, though in neither is the number of members a fixed one. The house of representatives, sometimes called the lower house, often simply the house, is by far the more numerous. The constitution provides

that the number of representatives shall not exceed one for every thirty thousand of such population as is entitled to representation, though every state is to have at least one representative; and in order to apportion the representatives, provision was made for a decennial census, the first enumeration to be made within three years after the first meeting of congress. Until the first enumeration should be made, the constitution arbitrarily apportioned the representatives among the states, making the whole number sixty-five. So long as slavery existed, the population entitled to representation consisted of all free persons, including those bound to a term of service, and excluding untaxed Indians, together with three-fifths of the slaves. Since the passing of the XIVth amendment, it has consisted of the whole number of persons in each state except untaxed Indians. Since the meeting of the first congress the number of members in the house has been increased with the increase of population, though not in direct proportion. After every decennial census congress determines what shall be the whole number of representatives, and they are then apportioned among the states according to population. By act of congress approved August, 1911, to take effect March 4, 1913, the number of representatives was fixed at 435, which is in the ratio of one representative to about 220,000 of the population. In the first house the ratio was one for about every 61,000. The criticism is sometimes made that the house has become so large as to be unwieldy, but it is still small in comparison with the lower houses of the leading European legislatures. In England the corresponding body consists of 670 members; in France of 591; in Germany of 397. If a new state is admitted after an apportionment

act is passed, the new members are additional to those provided for by the act. Besides the regular representatives from the states, there are in the house also delegates from the territories, each organized territory being entitled to one. These delegates have the privilege of speaking on any question affecting their territories, but are allowed no vote. Since representation in the senate is based on the states and divided among all the states equally, each state being entitled to two senators, that body also increases in size with the admission of every new state. Composed at first of twenty-six members, it now numbers ninety-six (1912).

231. The Suffrage. The members of the house of representatives are chosen directly by the people in each state. At the time of the constitutional convention the limitations upon the suffrage differed very considerably in the different states, and it seemed wisest to leave to the states the matter of deciding who should have the right to vote for representatives; consequently, it was provided that the electors (those possessing the right to vote) in each state should have the qualifications necessary for electors of the most numerous branch of the state legislature. By the passage of the XIVth and XVth amendments in 1868 and 1870, however, some restrictions were placed upon this unqualified right of the states to fix the limitations of the suffrage. By the XVth amendment they are forbidden to abridge the right to vote "on account of race, color, or previous condition of servitude;" while the XIVth brings strong pressure to bear in favor of manhood suffrage by providing for a reduction of the basis of representation in proportion as any state abridges the franchise of any male citizen twenty-one years of age except for participation in crime.

In spite of these restrictions, however, it is possible for the electoral franchise by which the members of the national house of representatives are chosen, to differ widely in the different states. As a matter of fact, the differences are small. There is practically manhood suffrage everywhere, except for the disqualification in some states of paupers, illiterates and other defective or delinquent classes.

232. Qualifications of Representatives. The qualifications fixed by the constitution for members of the house of representatives are three: (1) the person chosen must be at least twenty-five years of age; (2) he must have been seven years a citizen of the United States; and (3) he must when elected be an inhabitant of the state from which he is chosen. But universal custom and, in some states, state law have placed a further restriction upon the choice by requiring the representative to be also a resident of the congressional district from which he is chosen. The advisability of this additional qualification has been questioned, especially by European critics of our political institutions. In Europe, where this local restriction does not generally exist, it has been found that representatives of one district elected from some other are not less well informed as to local needs or less zealous in behalf of their constituents than those chosen from their own districts. It is argued against the system that it tends to lower the general level of ability in the legislative body, on the one hand by returning men of inferior ability from some districts where there is little ability or where the best talent does not seek an outlet in politics; on the other by barring out men of superior ability in districts, such as those of the large cities in the older states, where such men are more numerous than the places to be filled.

In spite of criticism, however, there is a deeply rooted public sentiment in favor of the restriction. Besides the feeling of local pride, which forbids the supposition that a better candidate could be found outside the district than within it, and the less commendable desire to reward local political services with such offices, there is a profound belief that no one can understand local needs or be so zealous in behalf of local interests as one residing in the community represented.

233. Exclusion of Members-Elect. These are the only restrictions imposed upon the people in the choice of their representatives; but it does not necessarily follow that every representative chosen by a constituency will be seated in the national legislature. The house has more than once asserted its right to exclude members-elect for treason or other crime. During the civil war an act was passed requiring of persons elected to office a test oath that debarred great numbers; and congress has always maintained its right to exclude members-elect in case something in their character or careers is strongly condemned by public sentiment. It was on this principle that the house of representatives acted in January, 1900, when it excluded Brigham H. Roberts of Utah as "a violator of Federal law relating to polygamy and its attendant crimes"; and the senate in July, 1911, when it excluded William Lorimer of Illinois for employing corrupt methods to secure his election.

234. Length of Term. While the term of a representative is fixed by the constitution at two years, reëlection is possible as often as may be pleasing to the constituents. As a matter of fact, however, it is not the general practice, except perhaps in some of the older eastern states, to return the same man term after term. In order to be even moder-

ately sure of retaining his seat through two or three successive terms, a representative must usually be either a very adroit politician or an eminent party leader. The result is that a congressman's whole period of service in the house is not likely on the average to be more than four years; and that at each biennial election the composition of the house is greatly changed, about half the members being new men. This, it is urged on the one hand, is an advantage in a number of ways: rotation in office helps to keep our institutions democratic; the biennial elections tend to keep the people alive to the political questions of the day; the shortness of the term assists in preventing any extensive political jobbery; and the occurrence of an election in the middle of the president's term acts as a check upon him by giving the people, if they wish it, an opportunity to express disapproval of his policy by returning a house politically opposed to him. On the other hand, there is at least one unquestionable objection to the shortness of the term: it practically obliges the man who is ambitious for a political career to devote his best energy to the securing of his reelection rather than to the serious study of legislative problems. Mr. Bryce says of this: "No habit could more effectually discourage noble ambition or check the growth of a class of accomplished statesmen. There are few walks of life in which experience counts for more than it does in parliamentary politics. It is an education in itself, an education in which the quick-witted Western American would make rapid progress were he suffered to remain long enough at Washington. At present he is not suffered for . . . nearly one-half of each successive house consists of new men, while the old members are too much harassed by the trouble

of procuring their re-election to have time or motive for the serious study of political problems."

235. Elections. The times, places, and manner of holding elections for members of congress are left by the constitution to the state legislatures, though the right is reserved to congress to alter such regulations of the state legislatures at any time, "except as to the place of choosing senators." Since the adoption of the constitution, congress has thought best to fix the time for and define the manner of holding these elections. For the election of representatives the time prescribed is the first Tuesday after the first Monday in November of the even-numbered years. As to the manner of election the practice of the states at first varied, some electing their members by districts, others electing them on a common ticket for the whole state. This last method, often called election by general ticket or "at large," usually resulted in giving to the party that carried the state the whole number of representatives, though the defeated party might have been almost equal in numbers. Since 1842 the states have been required to elect representatives by districts only, though under certain conditions they are given permission to elect by general ticket. The division of the state into districts is left to the state legislatures.

236. Gerrymandering. This power of marking out the congressional districts has given the state legislatures a very important part in determining the composition of the house by means of the process known as "gerrymandering," nor have the restrictions placed upon the states greatly diminished that influence. The process of gerrymandering consists in laying out the districts in such a way as to secure for the political party making the division a majority in

as many districts as possible. Thus, where a district is in any case hopelessly lost to the gerrymandering party, district lines are manipulated in such a way as to throw into it as large a proportion of political opponents as possible; where a district is doubtful, it is strengthened by adding to it some town or section strongly favorable. In interpreting the act of 1872, by which it was required that the territory composing the district should be compact and contiguous, any territory has been regarded as contiguous that touches the district at a single point; and as a result some districts have been created quite as absurd in contour as that which first gave rise to the term "gerrymander."[1] In Missouri, in order to throw as great a number of negro voters as possible into a single district, one was created that measured along its windings a greater length than the state itself. Other absurd examples are the "shoe-string" district of Mississippi, 500 miles long by 40 broad; the "dumb-bell" district of Pennsylvania; and the "monkey-wrench" district of Iowa.

237. Representatives at Large. If, after a census, the number of representatives in any state has been increased and the legislature fails to redistrict the state before the next congressional election, the additional representatives are chosen on a general ticket and are known as "representatives at large."

[1] The name is said to have had its origin in an incident connected with the redistricting of Massachusetts by the republican legislature in 1811 while Elbridge Gerry was governor. In the redistribution one of the districts had assumed a somewhat lizard-like form. This was shown on a map hanging over the desk of the editor of an opposition paper. The painter, Gilbert Stuart, happening to observe the figure, promptly added head, wings and claws, remarking, "That will do for a salamander." "Better say a Gerrymander," replied the editor, and the word passed into the language.

238. Vacancies. In case a member wishes to resign for any reason, he does so by letter to the governor of his state. If a seat becomes vacant by the death, resignation or expulsion of a member, the governor issues a writ for a new election.

239. Election Expenses. There are always, of course, expenses connected with an election — some necessary official expenses, for clerks, polling booths, etc.; some perhaps not absolutely necessary yet regarded as quite legitimate; some entirely illegitimate. The official expenses are paid out of the public treasury. The total expense varies greatly from district to district. In some districts it is very small; in other warmly contested districts, especially in large cities, it mounts up into the thousands of dollars. It is certain that bribery is resorted to more or less frequently, but circumstances make proof of the offence so difficult that an election is not often contested on that ground. The power of deciding contested election cases rests with the house, which does not meet until a year after the election. Since such a contest is likely to drag over the greater part of the first session, there is a general disinclination to enter upon it, the shortness of the term making it seem hardly worth while.

240. The House: Officers. The first business before a new congress is naturally the business of organization and the election of officers. In the house these officers are speaker, clerk, sergeant-at-arms, doorkeeper, postmaster, and chaplain, only the first of whom is a member of the house. The term of the speaker expires with the congress that elected him; the other officers hold over until their successors are chosen. In the organization of a new house the clerk of the preceding one plays an important part. It is his busi-

ness to make up the roll of the new house from the certified returns of the states; and in doing this he is obliged to enroll all who hold regular certificates, even though a question of their validity has been raised. Thus, even those whose seats are contested take part in the organization of the house. Until the house elects a speaker, the clerk of the old house also acts as presiding officer, and is expected in his rulings to deal fairly with all concerned. In case, as sometimes happens, the election of a speaker is more than a formal ratification by the house of a choice made in the caucus of the majority party, this duty of presiding may make the clerk of the house for a time an important figure politically. The ordinary duties of the clerk are to keep a record of all questions of order that arise, to certify to the passage of bills, to keep an account of disbursements, to keep the house journal and take charge of its printing. The duties of the doorkeeper, postmaster, and chaplain are sufficiently indicated by their names. To the sergeant-at-arms is intrusted the task of keeping order in the house. He also acts as paymaster of the house, paying members and delegates their salaries and mileage. The speaker is the most important officer in the house. Indeed, he has been called "the second if not the first political figure in the United States." Since his special duties and powers will be described in another connection (§§ 321–323), it will suffice to say here that he performs in the house the usual duties of a presiding officer, and calls a member to the chair when the house resolves itself into a "committee of the whole," *i.e.*, when it changes itself from a legislative to a deliberative assembly in order to consider particular questions before taking legislative action upon them.

241. Method of Choice. Nominally the officers of the house are chosen directly by the house; actually they have already been chosen before the house takes action in the matter. The real choice is made at a caucus of the majority party, where a list of the officers is agreed upon. When these nominations are made in the house, the party votes solidly for them and the election is, of course, assured. To be sure, the majority could, if it chose, reject the decision of the caucus; but it does not choose, so that the election by the house virtually amounts to a mere formal ratification of the choice made in the caucus.

242. The Senate: Its Origin and Character. Turning now to the senate, we find ourselves dealing with a body in some respects very different in character from the house of representatives. It is often supposed that the senate had its origin in the necessity for conciliating the small states. As we have already seen, this is an erroneous idea (§ 221). From the first there was practically unanimous agreement in the constitutional convention that the national legislature should consist of two houses. Some sort of senate we should have had in any case. When the necessity for conciliating the small states arose out of the question as to what should be the basis of representation in the national legislature, it did nothing but determine the *form* of the senate. It made it representative of the federal idea — the idea that this is a union of states, which is just as true and just as important as the national idea — the idea that the people of the United States collectively form a single nation, one and indivisible. Ever since the convention the provision of the constitution giving the states equal representation in the senate has found opponents. It is argued that it is not fair, not in keeping

with democratic institutions, that Nevada, for instance, with her 42,325 inhabitants should have as much legislative power in the senate as New York with her 9,113,279.[1] The criticism overlooks the fact that the framers of our constitution did not intend to form a simple democratic government for a consolidated state. They were building a federal state. Certainly, aside from the fact that for the framers of the constitution it was a practical necessity, the plan of equal representation of the states in the senate offers advantages. It gives a real justification for the division of the legislature into two houses by providing a distinctly different basis of representation, and it forms a link between the state and the national governments.

243. The Senate: Constitutional Provisions. The constitutional provisions determining the character and organization of the senate may be summed up very briefly. The significance of some of them will have to be considered more at length. According to the constitution the senate is to be composed of two senators from each state,[2] chosen by the people[3] for a term of six years. Any person so chosen must have attained the age of thirty years; must have been for nine years a citizen of the United States, and must, when elected, be an inhabitant of the state from which he is chosen. It was provided that after the first election the senators were to be divided as equally as possible into three classes, the first to retain their seats for two years, the second for four, and the third for six, so that one-third of the senate might be chosen every second year. When vacancies occur in the representation of any

[1] Census of 1910.

[2] Arizona and New Mexico, admitted in 1912, make forty-eight states.

[3] See Seventeenth Amendment, p. lxxv.

state, the executive of such state shall issue writs of election to fill such vacancies. The state legislature may authorize the governor to make temporary appointments pending the election to fill vacancies. The vice-president of the United States is to be president of the senate, but has no vote except in case of a tie. The senate is to elect also a president *pro tempore* and such other officers as it chooses. Every senator is to have a vote, *i.e.*, the vote in the senate is to be by individuals, not by states.

244. The Senate: Objects Aimed At. It is interesting to note how these provisions have determined the character of the senate, sometimes resulting as the framers of the constitution intended that they should, sometimes giving most unexpected results. Their main object was to create in the senate a dignified, conservative body possessed of practical experience and superior intellectual ability, which was to act as a check upon the "democratic recklessness" of the house on the one hand, and the "monarchical tendencies" of the executive on the other. It was hoped that the higher age qualification would result in sending to the senate men of wider information and greater stability of character than that ordinarily possessed by members of the house; while the indirect manner of election and the length of the term were intended to secure greater independence of action than was possible or desirable in the lower house. In order that it might be an effective check upon the executive, it was deemed necessary that the senate should be made to share to a certain extent executive power. Hence its comparatively small size. This, too, was the primary reason for the division of the senate into classes. One of its chief executive functions is to share in the management of foreign affairs, a function that can be satisfactorily performed only by a body possessing sufficient permanency to assure a certain continuity of

policy. By retiring only one-third of the senate every two years such permanency is secured. A "new house" is created every second year; a "new senate" never.

245. Election of Senators. Of those clauses of the constitution dealing with the senate, the one providing for a method of electing the senators was perhaps the most conspicuous failure. The constitution provided simply that they were to be elected by the state legislatures, the time and manner of holding such elections being left to the decision of the states, though the right was reserved to congress "to make or alter such regulations by law" at any time. Up to 1866 congress took no action in the matter. Then a federal law was passed providing a uniform method of election. This required that each house should first vote separately for the election of a senator. If the choice of both houses did not fall upon the same person, they were to meet in joint session and take a *viva voce* vote, a majority of each house being present and a majority of the whole legislature being required for election. If there was still no election, the joint assembly must meet on each succeeding day and take at least one vote until a choice was made. These provisions so often resulted in abuse of various kinds (the deadlock, the breaking of a quorum, etc.) that agitation arose in favor of direct election of senators, and a number of the state legislatures formally recorded their approval of the plan.

246. Movement toward Direct Election by the People. The objections urged against the election of United States senators by the state legislatures were by no means trifling. The tendency was unquestionably to carry the strife of national parties into the state legislatures and to make national party interests paramount there to the detriment of state

interests. This method of election was charged "with the deterioration of state legislatures, with the growth of machine rule, with the purchasability of senatorships, and with the decline of the United States itself." Various methods of securing something like a direct election began to be used. The choice of senator was frequently made through the expression of the party caucus, later ratified by the majority party in the state legislature, thus bringing the actual election one step nearer to direct election by the people. This was done in response to the demand of the people to choose their own representatives in the senate, and undoubtedly influenced congress to propose the amendment to the constitution providing for the direct election of senators by the people at general elections. Another method which had its influence on congress was the practice of the state of Nebraska. In that state, voters when voting for members of the state legislature were permitted "to express by ballot their preference for some person for the office of United States senator." The votes cast for such candidates were canvassed and returned in the same manner as for state officers. Where such a system prevailed, any party could propose a qualified candidate for senator and secure an expression of popular approval or disapproval throughout the state. Of course the legislature was not then bound by law to elect a candidate who might have been indicated in such a manner as the people's choice; but the political power of any unmistakable expression of popular opinion is very great, and such an expression would naturally be ratified in the state legislature. It was quite generally the custom, also, in the southern states to nominate United States senators at the primaries, and such nominations were considered as morally binding upon the state legislature.

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247. Adoption of Direct Election. Several times a resolution providing for an amendment to the constitution to procure the direct election of senators by the people passed the house, but each time it failed in the senate. Finally, the second session of the sixty-second congress passed a resolution (1912) approving a constitutional amendment for this purpose. The amendment had to be ratified by three-fourths of the state legislatures (see Art. V, p. lxix). This was done, and the state of Georgia was the first to choose a senator under the provisions of this amendment (July, 1913). In 1915 the terms of one-third of the members of the senate expired. At the general election in November, 1914, their successors were elected by direct vote of the people.

248. The Senate: Its Officers. The officers of the senate, except the president, are chosen by that body. They are president, president *pro tempore*, secretary, chief clerk, sergeant-at-arms, chaplain, postmaster, librarian, and doorkeeper. None of these except the president *pro tempore* is a member of the senate. As we have already seen (§ 243), the vice-president of the United States is *ex officio* president of the senate. He cannot vote except in case of a tie, nor does he appoint the committees; they are chosen by the senate. The president *pro tempore*, on the other hand, has a vote on any question, but cannot cast the deciding vote in case of a tie. The vice-president having taken the oath of office at his inauguration, takes up his duties as presiding officer on the first day of the session and administers the oath of office to the new senators.

249. Privileges of Members of Congress. The members of both houses are by the constitution granted certain privileges on the one hand and subjected to certain restrictions on the other. Except for treason, felony, or breach of the

peace they are privileged from arrest while attending sessions of the legislature or while going to or coming from such meetings; and they cannot be subjected to question outside the legislature for any speech or debate uttered there. The object of taking this extraordinary precaution to secure freedom of person and freedom of speech to a member of congress is, of course, to prevent his district from being actually deprived of its representation by means of a false charge against him, or practically deprived of it by muzzling his utterances. Besides thus securing them special privileges, the constitution provides that congressmen shall be paid for their services out of the federal treasury. The question as to whether salaries should be paid to the national legislators was warmly discussed in the constitutional convention. English practice was opposed to it; the practice of the states favored it. The convention followed the example set by the states,[1] partly in the belief that men of ability might thus be enabled to enter the public service who would otherwise be debarred by poverty; partly with a feeling that the salary might be a means of making positions in the national legislature attractive enough to compete with those of the state legislatures. The constitution left the amount of the salary to be determined by law, and it has been changed several times. Both senators and representatives receive $7,500 per year, with 20 cents per mile for travelling expenses to and from Washington, and $125 for stationery. Each senator is allowed $1,800 per year, and each representative $1,500 per year for a clerk. The speaker of the house receives $12,000 per year and mileage; the president *pro tempore* the same, while acting as president of the senate.

[1] Bryce presents the arguments on the other side. See Vol. I, pp. 194–195 and note.

250. Disabilities. On the other hand, members of the federal legislature are disqualified for appointment to "any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased" during their term of service; and United States officials cannot become members of the national legislature and at the same time continue in office. The object of the first part of this provision was to remove a possible temptation on the part of members to create offices or increase the salaries attaching to already existing offices for the sake of profiting by them personally. The last part is another example of concession made to appease state jealousy, the states fearing that the admission of United States officials to seats in congress would give the national government undue influence over the states.

251. Sessions of Congress. The time fixed by the constitution for the meeting of congress is the first Monday in December. As we have already noted (§ 235), the elections for members of the house fall in November of the even-numbered years, but the house elected at that time does not meet until December of the following year. There are two sessions of each congress: the first or long session, beginning the first Monday in December a year after election and continuing usually until midsummer, though it would be possible for it to continue until December; and the second or short session, beginning likewise in December one year after the opening of the first session and continuing until the 4th of March following, when the congress expires. Thus it will be seen that one session of each congress is held after its successor has been elected, and that it is possible for the expiring congress to pass legislation of which the people have

already expressed disapproval by electing a house of a different political complexion. Bills may carry over from the long to the short session in the house and perish with the arrival of March 4th, but senate bills do not die by the passing of time. The daily sessions last usually from noon until four or six o'clock, but may be, and often are, prolonged until late at night, particularly toward the end of the session. *One congress* is two years in length and has two sessions.

252. Quorum. It is provided by the constitution that a majority of each house shall constitute a quorum, but a smaller number may adjourn from day to day and may compel the attendance of absent members. There has been some discussion as to whether "a majority of each house" means a majority of the whole number that might possibly be elected or a majority of those who are actually members — in other words, whether vacancies should be counted. The view has generally been held that they should not. In case there is no quorum, and fifteen members and the speaker are present, they may proceed to compel the attendance of absentees by closing the doors of the house, calling the roll, noting the absent members, and then by a majority vote of those present authorizing the sergeant-at-arms to arrest and bring into the house such members as have no sufficient excuse for absence.

253. Procedure. Each house is given the power of determining its own rules of procedure and of enforcing them by punishing disorderly members even to the extent of expelling them, but the concurrence of two-thirds of the house is necessary for expulsion. In order that the public may be kept informed of the proceedings of congress, each house is required to keep a journal and to publish it from time to time,

"excepting such parts as may in their judgment require secrecy." The debates, however, are published daily in the Congressional Record, not in the journal.

254. Adjournment. In the matter of adjournment the constitution provides that "Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting." This provision is designed to prevent the blocking of legislation by the adjournment of one of the houses. If the two houses can come to no agreement as to the time of adjournment, the president may adjourn them to such time as he deems proper.

255. Comparison with Congress of the Confederation. We have already noted the significance of some of the differences between the congress created by the articles of confederation and that created by the constitution. It may be well here to summarize briefly the chief differences in the organization of the two bodies.

(1) The congress of the confederation consisted of a single house; that created by the constitution consists of two houses.

(2) Under the confederation each state was entitled to representation through delegates ranging from two to seven in number; under the constitution members are apportioned according to population in the house; by states in the senate, two for each state.

(3) Under the confederation the terms of delegates were one year in length; under the constitution representatives serve two years, senators six.

(4) Under the confederation delegates were chosen from each state as the legislature of the state might direct; under

the constitution representatives are elected by the people, senators by the state legislatures.

(5) Under the confederation each state had but a single vote no matter what the number of delegates; under the constitution each senator and representative has his individual vote (*i.e.*, Ohio 23, New York 39, etc.).

(6) Under the confederation the salaries of delegates were paid by the states; under the constitution they are paid by the United States.

Library References. Macy, chap. xxxiii, pp. 211–217; Macy, *First Lessons*, chap. xvii; Dawes, chap. ii, pp. 119–127, 139–141; Bryce, Vol. I, chaps. x, xii–xiii, xix; Hinsdale, chaps. xvii–xx, xxiii; Wilson, §§ 1054–1061, 1064–1073; *Federalist;* Madison, *Journal of Convention;* Fiske, pp. 220–228; Harrison, chaps. ii–iii; Curtis, Vol. I, chaps. xxii–xxiii, xxv; Wilson, *Congressional Government*, pp. 219–230; Dole, chap. xii; Alton, chaps. ii–iii, viii; Lalor, Articles on *Gerrymander*, *Senate*, *House of Representatives;* Woodburn, pp. 196–210, 214–222, 230–231, 239–243, 246–255.

QUESTIONS ON THE TEXT

1. Describe the legislative department of the national government.

2. Why was it thought best to have congress consist of two houses? What are the advantages of two branches in congress?

3. Give in substance the provision of the constitution in reference to apportionment of representatives.

4. How is the number of members composing the house of representatives determined? State the number composing the present house. (See latest edition of Tribune or World Almanac.) When may this number be increased?

5. What state has the largest number of members in the house of representatives? Why?

6. How are members of the lower house elected?

7. State the qualifications required for membership in the house of representatives and explain the importance of two of these requirements.

8. How long is the term of office of a member of the house of representatives?

9. How are vacancies in the office of representative filled?

10. Define bribery.

11. Mention the principal duties of the speaker of the house of representatives.

12. State the basis of representation in (1) the senate; (2) the house of representatives. Why this difference?

13. State the conditions of eligibility to the office of senator.

14. Give with respect to a senator (1) length of term; (2) minimum age; (3) salary; (4) duties.

15. One-third of the members of the senate are chosen once in two years. Give reasons for the gradual change in membership.

16. Explain why the constitution provides that the term of a member of the house of representatives shall be shorter than the term of a senator.

17. How are senators elected? What is meant by a joint ballot in the legislature? Give the principal arguments for and against the election of senators by direct vote of the people.

18. State how the president *pro tempore* of the senate is chosen, and mention one duty.

19. How do the two houses of congress differ as to the way in which the presiding officer is chosen?

20. Under what circumstances are the presiding officers in congress entitled to vote?

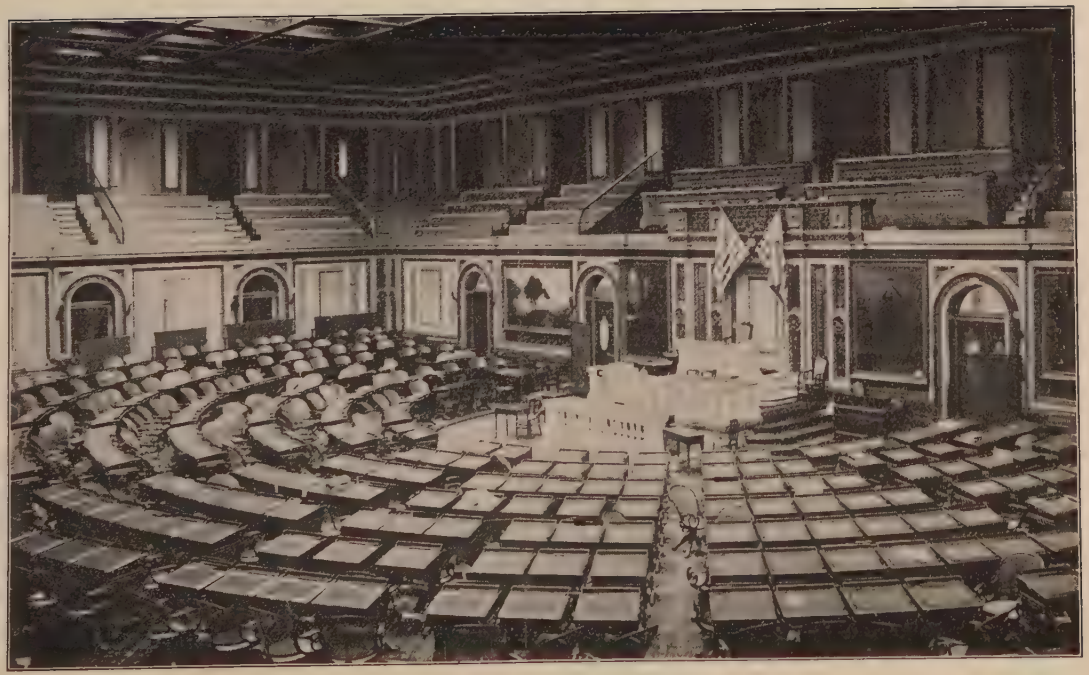
21. Mention two privileges conferred by the constitution on senators and representatives in congress, and give a reason for each provision.

22. What privilege have members of congress as to arrest, and why is this privilege given them?

23. How often does congress meet?

24. Define quorum; majority; plurality. What is meant by the "49th Congress"?

25. In what respects did congress under the confederation differ from congress under the constitution?



THE CHAMBER OF THE HOUSE OF REPRESENTATIVES

CHAPTER XX

LEGISLATIVE DEPARTMENT: ITS POWERS AND LIMITATIONS

256. The Taxing Power. When the makers of our constitution in drafting the document came to assign powers to the congress for which they had provided, they dealt first with the powers of congress touching the matter of money, and they placed at the head of the list the power "to lay and collect taxes, duties, imposts, and excises." Experience under the articles of confederation had taught them the absolute necessity of placing the power of taxation in the hands of the central government, if it were to continue to exist. They had learned that no government can be in any true sense a government, that it cannot even continue to be, unless it has the power of securing the means for its own continuance. This power is to a government what the power of securing food is to an individual of the animal world. However highly endowed in other respects, if it lacks this, it must soon succumb. The power of taxation is the ultimate means through which government accomplishes the objects for which it exists. This the framers of the constitution recognized; for in clothing congress with this power they added that it was in order that it might "pay the debts and provide for the common defence and general welfare of the United States."

257. Taxes: Classification. What, then, are these "taxes, duties, imposts, and excises" that congress is empowered to

lay and collect? How do they differ from each other and how are they laid and collected? Tax is the general name for money demanded by government for public purposes from those under its authority. Duties, imposts, and excises are all taxes. Taxes are divided into two general classes — direct and indirect. A tax is direct when the burden of it is borne by the person from whom government demands it, *e.g.*, poll-taxes and taxes on land, property, or income.[1] Indirect taxes "are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another," *i.e.*, they are levied on goods before they reach the person who uses them and are paid by him as a part of the price, not as a tax. Duties, imposts, and excises are indirect taxes. With the exception of an income tax, direct taxes in the United States are levied only by state and municipal governments, the revenue for the general government being largely derived from indirect taxes; but congress has at various times levied direct taxes. The reason for the discontinuance of direct taxation by the general government is that under present constitutional requirements it works injustice to some sections. Congress is forbidden by the constitution to lay any direct tax except in proportion to population.[2] If, then, one state has twice as many inhabitants as another, it must pay twice as large a share of any direct tax that may be levied. That seems just at first sight; but, as a matter of fact, the state that has twice as large a population as another has in general more than twice as much wealth, so that the tax falls more heavily on the less populous states.

[1] See XVIth amendment, p. lxxv.
[2] See Art. I, sect. 9, p. lxi.

258. Indirect Taxes: Duties. It is, then, in indirect taxes that we are chiefly interested here. Duties (also called customs) are taxes laid upon goods exported or imported. The term "imposts" is by some writers restricted to duties upon imports, but the distinction is not generally made. Since congress is forbidden by the constitution to tax articles exported from any state, duties in the United States are always import duties. They are of two kinds — specific and *ad valorem*. Specific duties are fixed amounts of taxation laid upon the unit of measurement of the article taxed, *i.e.*, the duty is chargeable by quantity, weight, or number. An *ad valorem* duty is one levied at a certain rate percent on the value of the commodity taxed, *i.e.*, the duty is chargeable according to the value of the article. Sometimes both a specific and an *ad valorem* duty are levied upon the same article.

259. The Tariff. In order that duties may be imposed as it desires, the government sees to it that a list of goods with the duties to be paid on them is made out and placed in the hands of the proper officials. Such a list is called a tariff or a tariff schedule. The term "tariff" is applied also to the duties imposed according to such a list, *i.e.*, to the resulting revenue, as well as to a law regulating import duties. Tariff questions have played a very important part in the history of the United States, becoming at times the main point at issue between the two great political parties. Such questions arise out of differences of opinion as to what should be the purpose of government in imposing duties. When a duty is laid upon an imported article the importer simply increases the price of it sufficiently to indemnify himself for the amount paid to the govern-

ment.[1] Thus the price may be increased to such an extent that, if the article can be produced in this country at all, it will be cheaper to produce it here than to buy it abroad. In this way a new industry may be created, or an existing one that was in danger of being forced out of existence may be enabled to continue. This policy of creating or fostering home industries by means of the imposition of duties is known as the policy of protection, and those who believe that it is the duty of government to maintain such a policy are called protectionists. Their opponents, the so-called free-traders, do not generally insist upon a policy of absolute free trade. They admit that congress has the right to impose duties, but insist that they should be for the purpose of producing revenue only.

260. Excises. The other kind of taxes through which the government obtains revenue for its support, is the kind known as excises. These are taxes levied upon the consumption, sale or manufacture of commodities within the country. The revenue resulting from them is known as "internal revenue." Liquors and tobacco are the commodities most commonly subjected to this kind of taxation, but are by no means the only ones. When it became necessary, in order to pay the expenses of the Spanish-American war, for the government to secure additional revenue, the list of articles producing internal revenue was greatly increased. A tax was levied on bankers and brokers; on all sorts of proprietary articles (patent medicines, perfumes,

[1] In theory, a tariff for any purpose is added to the price of the goods to the consumer. In fact, however, competition between producers in the same country, advantages in transportation and the law of supply and demand, so modify the theory that in many cases the price to the consumer is equal to or less than the foreign price, and in some instances has been less than the tariff on the foreign commodity.

etc.); and on legal documents, such as bank checks, telegraph and telephone messages, express receipts, etc. These documentary taxes were like those imposed by the stamp act of 1765, and were collected by requiring that a stamp be affixed to the documents.

261. Collection of Taxes. Considerable expense attaches to the collection of these federal taxes. In order to collect the import duties, the government has designated certain places along the coasts and other boundaries to be used as "ports of entry." At these places custom-houses are established in charge of officials known as "collectors of customs," who, with their assistants called "inspectors," are charged with the duty of examining goods coming into the country, and assessing the duties upon them according to the existing tariff rates. At New York, the principal port of entry in the United States, nearly two thousand officers and clerks are employed in this work. Besides custom-house employees the government is obliged to keep in its service also a large number of special agents and revenue cutters to prevent "smuggling," as the illegal importation of dutiable commodities is called. The collection of excises is under the supervision of the "commissioner of internal revenue," who is the head of one of the bureaus of the treasury department. The country is divided into revenue districts, each district in charge of a collector, whose duty it is to see that the laws are enforced in his district.

262. The Power to Borrow. Next after the power of taxation the constitution places in the hands of congress the power "to borrow money on the credit of the United States." Under normal conditions every well-regulated government is able to provide the means for its support by the ordinary

methods of taxation; but emergencies, such as war, requiring suddenly increased expenditures, may arise, and the government must then obtain revenue either by additional taxation or by borrowing or by both. Of course all money borrowed by the government must ultimately be paid by taxation, so that the two are closely connected. Borrowing only shifts a part of the burden of taxation to a later date, to the shoulders of a later generation in most cases. The ordinary method employed by government for borrowing money is the sale of bonds. A government bond is the same in nature as a promissory note given by an individual when he borrows money. It is the government's promise to pay a certain sum at a certain time with interest. Sometimes they are made payable at the option of the government after a certain minimum number of years, but fall due within a certain maximum number. The United States government has borrowed money in other ways than by the sale of bonds. It has issued treasury notes. These were not really different in character from bonds, but they were generally smaller in denomination and ran for shorter periods. A third method was that employed by the government in the legal tender acts of civil war times. These acts really provided for a forced loan from the people. Congress authorized the issue of a large number of United States notes, which it declared legal tender, *i.e.*, they must be accepted in the payment of debt.

263. Money: Its History. Another important power vested in congress is the power of coining money and regulating its value and that of foreign coin. This is not the place to enter upon a detailed discussion of the origin and history of money. It will be sufficient to note that as soon as

trade begins to develop, men begin to feel the need for some convenient medium of exchange, *i.e.*, for some sort of money. Different substances have been used for this purpose among different peoples at various times; but metals, and particularly gold and silver, have been found most convenient and have been generally adopted. At first the mere bits of metal were used, their value being determined by weighing. Later they were wrought into some sort of form, and marked in some way to indicate their weight; in other words, they were coined; but this process, being at first in private hands, could give neither uniformity nor assurance of value. Thus governments began to assume this function of coinage, and the government stamp became a pledge of the value of the coin.

264. Power of Coinage. United States Money. At the time of the adoption of the constitution there was no uniform monetary system in the country, the money in circulation consisting of a variety of foreign coins — Spanish dollars, English shillings, etc.; and the need for uniformity had become obvious. This was secured by vesting in congress alone the power of coining money and regulating its value. The actual process of coining money is carried on by the government at its mints. Of these the first was established at Philadelphia in 1792, and this still remains the principal one. Since then mints have been established at San Francisco, New Orleans, Denver, and Carson City. The government also maintains a number of assay offices, places where gold and silver are brought to be tested for the purpose of determining their purity. The coinage of money is under the direction of one of the bureaus of the treasury department known as the United States mint. The officer in charge of

this bureau is called the director of the mint. Gold, silver, nickel, and bronze are the metals used in coins. At present the gold coins issued from the mints of the United States are the double eagle, eagle, half eagle, and quarter eagle; the silver coins are the dollar, half dollar, quarter dollar, and dime; the minor coins are the nickel and one cent piece. The gold coins and the silver dollars have been declared legal tender for any amount, excepting when the contract stipulates otherwise; the smaller silver coins in sums not exceeding ten dollars; the other coins up to twenty-five cents. Besides its coins the United States also issues paper money. This is made at the bureau of printing and engraving, which, like the United States mint, is under the direction of the treasury department. The kinds of paper money now in circulation are United States notes, silver certificates, gold certificates, treasury notes of 1890, and national bank notes.

265. Counterfeiting. We have seen that the power of controlling the monetary system of the country was put into the hands of congress in order that the people might be able to count upon its uniformity and the value and genuineness of the money issued. To accomplish this fully it was necessary that another power should be granted to congress — namely, the power "to provide for the punishment of counterfeiting the securities and current coin of the United States." To counterfeit anything is "to make a copy of it without authority or right, and with a view to deceive or defraud by passing the copy as original or genuine." In the matter of money the law regards it as counterfeiting either (1) to manufacture, (2) to put into circulation, or (3) to have in possession with intent to circulate forged coins or securities of the United States. The forged coins may be of equal weight

and purity with those of the government; they are none the less counterfeit. By the term "securities of the United States" is meant the bonds, paper money, etc., mentioned above, together with postage and revenue stamps. So important is it that the genuineness of the nation's money should be beyond suspicion that the penalties provided for the offence of counterfeiting are extraordinarily heavy; and not only the general government but the several states have enacted laws for its punishment. It is also forbidden to counterfeit within the United States the coins, notes, bonds, etc., of foreign governments.

266. Power to Regulate Commerce. It will be remembered that one of the defects of the articles of confederation was that they left the control of commerce entirely in the hands of the separate states, with what unsatisfactory results we have already seen (§ 201). It will be remembered also that the constitutional convention itself grew out of the attempts made through the Alexandria and Annapolis conventions to solve these difficult commercial problems; and that it was only with the greatest reluctance that some of the states finally yielded to the general government the right to control their commercial relations with other states and with foreign nations. This right was finally yielded, however, and congress was given the power "to regulate commerce with foreign nations and among the several states, and with the Indian tribes." Commerce with the Indian tribes was a matter of considerably more importance in 1787 than it is now; and its regulation by the general government was a practical necessity, if frequent and more or less disastrous wars were to be avoided. Foreign and interstate commerce, on the other hand, have so increased in volume

and the questions involved have become so complex, that it would be now more than ever impossible to leave the control of them in the hands of the states.

267. Foreign Commerce. In accordance with the above mentioned provision congress has enacted a great variety of laws for the protection and facilitation of our commerce. When the matter of taxation was under discussion (§ 261), it was noted that for the purpose of collecting import duties, the government had designated certain places to be used as ports of entry and established custom-houses at such places. At these ports all vessels are obliged to "clear" and "enter." Before a vessel leaves port the master is required to show that all harbor duties have been paid and all regulations observed. Thereupon the collector of customs at that port issues a certificate called a "clearance," and the vessel is free to sail. Upon arrival in port, "entry" is accomplished by the master's reporting to the collector, presenting a statement of his cargo, and delivering the clearance received at his last port, if he has touched at an American port. Congress has also passed navigation laws defining the nationality of our ships (*i.e.*, determining what vessels shall be regarded as American), the manner of their registration, the privileges that shall be granted them, and the conditions under which foreign vessels may engage in the commerce of the country. Registration or registry is the process by which United States vessels secure the protection of this government in any part of the world. There is issued to the registered vessel by the government a document containing a general description of the vessel, and this is intended to serve as a means of identification and a certificate of protection. Only vessels owned by citizens of the United States

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and built in this country are registered. Under the authority of this provision also congress has taken measures for the protection of shipping by building and maintaining lighthouses and buoys, providing life-saving stations, improving harbors, establishing quarantine regulations, requiring the employment of licensed pilots, making coast surveys, etc. Finally, it is by virtue of this provision that congress has undertaken to regulate immigration into the United States. Under existing immigration laws admission to the country is denied to the following classes of persons: the Chinese, convicts, insane persons, paupers and those liable to become paupers, polygamists, anarchists, persons afflicted with contagious diseases, and laborers under contract to perform labor or service in the United States, excepting persons engaged in the professions and skilled laborers employed in the establishment of new industries. The object of these restrictions is obviously to bar out those classes of persons who, for various reasons, would be likely to constitute an undesirable element in the population; namely, those who because of some mental, moral, or physical defect could hardly be expected to become desirable citizens and might even be dangerous; those who for economic reasons would be objectionable in the eyes of a large proportion of our own population; and those who, because of wide racial differences, could not be easily "Americanized."

268. Interstate Commerce. Not less important than its control over foreign commerce is the power granted to congress to regulate interstate commerce. In interstate commerce is included not only land traffic between the states but also coast trade and commerce upon navigable rivers. In its "river and harbor" bills, therefore, congress yearly makes

large appropriations in aid of interstate commerce. The most important piece of legislation in regulation of interstate commerce ever passed by congress was the interstate commerce act of 1887. This was intended to relieve the public of some of the evils that had grown up in connection with the development of the great railway systems of the country. When the numerous small competing lines had been consolidated into a few great systems controlling a very large proportion of all interstate commerce, combination between these systems for the purpose of raising freight[1] and passenger rates, or securing for themselves other unfair advantages, became comparatively easy. The interstate commerce act was an attempt to remedy such evils. Among other things it provided (1) that all rates should be reasonable; (2) that there should be no unfair discrimination between persons, corporations, or localities; (3) that equal facilities should be given to all connecting lines; (4) that the charge for a "short haul" should not be greater than for a "long haul" under similar conditions; (5) that there should be no "pooling"[2] agreements; and (6) that an interstate commerce commission should be created to supervise the administration of the law. The commission created in accordance with the act consists of five persons appointed by the president with the consent of the senate. It has power to investigate all cases brought before it, to take testimony, and to render decisions; but it

[1] See Montague, "The Rise and Progress of the Standard Oil Company." New York, 1903.

[2] "Pooling" is an arrangement whereby a number of roads turn their earnings into a common fund to be distributed among the companies concerned in certain proportions agreed upon beforehand, the object being to remove the temptation to cut rates. Sometimes the freight itself is divided among the roads in fixed proportions.

cannot enforce its decisions by the infliction of penalties. That can be done only by regular process of the courts; and since conviction is a difficult matter, the interstate commerce law has never been fully enforced. Nevertheless the commission has exercised great influence in lessening the evils that the law was intended to correct.

269. Anti-Trust Law. Another important legislative act for the regulation of interstate commerce is the federal anti-trust law of 1890, making illegal "any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations." A trust may be loosely defined as a combination of manufacturers in any particular line, organized for the purpose of securing greater economy in production and preventing some of the losses incident to competition. Those who form a trust ordinarily do so with the hope of being able to limit the output of the commodity and control prices, thus violating the common law principle which forbids any unreasonable restraint of trade. A majority of the states have therefore passed laws prohibiting such combinations so far as their operations affect trade within the states; while the federal anti-trust law attempts to secure like protection for commerce between the states and with foreign nations.

270. Bankruptcy Laws. The right of congress to establish "uniform laws on the subject of bankruptcies throughout the United States" may likewise be looked upon as a power given for the sake of enabling the government to afford more effective protection to interstate commerce. The power of congress to pass bankruptcy laws does not interfere with the retention of a similar power by the states; it

only limits the power of the states in this matter. State bankruptcy laws affect only contracts made within the state between citizens of the state. Moreover, during the existence of a national bankruptcy law, state laws that are in conflict with it in any particular, are suspended.

271. Piracy. Congress is also given by another clause of the constitution, the power "to define and punish piracies and felonies committed on the high seas and offences against the law of nations." Piracy, *i.e.*, robbery committed on the high seas or committed by descent upon the coasts from the sea, is a menace to commerce and must naturally be made punishable by the same authority whose duty it is to protect commerce. Felonies committed on the high seas and offences against the law of nations are very likely also to have to do with commerce; and must in any case be made punishable by the United States, since the law of nations recognizes only the government of the nation, not that of New York or Ohio.

272. Weights and Measures. The same clause of the constitution that gives congress power to coin money gives it authority also to "fix the standard of weights and measures." Though this is a matter of considerable importance to trade, it was not until 1875 that congress established a bureau of weights and measures, and not until 1901 that a law was enacted giving full effect to this grant of power by establishing a national standardizing bureau in the treasury department.

273. War Powers. We have seen how powerless congress was under the articles of confederation to prosecute a vigorous war. Fortunately, before they went into effect the revolution was already drawing to a close; and while they remained the fundamental law of the land the government

was not again called upon to face the emergency of war. The members of the constitutional convention, however, realized the danger and remedied the defect of the old government by granting to the new one ample military powers. Congress was given power:

(1) To declare war, grant letters of marque and reprisal. and make rules concerning captures on land and water;

(2) To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

(3) To provide and maintain a navy;

(4) To make rules for the government and regulation of the land and naval forces;

(5) To provide for calling forth the militia to execute the laws of the United States, suppress insurrections, and repel invasions;

(6) To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress.

In addition to these powers congress was given the right:

(7) To exercise exclusive legislation in all cases whatsoever over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

274. Declaration of War. When the constitutional convention came to discuss the question as to where the power to declare war should reside, they considered the plan usually followed by European nations of leaving that prerogative with the executive. The question was settled, however,

by their adopting what they felt to be the more republican as well as the safer principle of granting this important power to the representatives of the people. While a formal declaration of war is not a necessary preliminary to hostilities, it is usual for a nation to make such a declaration.

275. Armies. The power to declare war implies as a consequence the power to raise and support armies. Under ordinary circumstances congress raises armies by enlistment (voluntary enrollment), but in case of necessity it may raise them and has raised them by conscription or draft (forced enrollment). It rests with congress also to determine the size of the army and the term for which the men shall serve; to furnish the necessary supplies and equipment; to build fortifications, arsenals, barracks, hospitals, etc.; to provide schools for the instruction of officers and men; to do all that may be required in order to make the army efficient. It was thought best, however, in giving congress this power of raising and supporting armies, to impose an important restriction. It was provided that no appropriations for this purpose should run for a longer term than two years. This keeps the army strictly dependent upon the people for its existence and support and enables them to control the military policy of the country. As a matter of fact, these appropriations have generally been made annually.

276. The Regular Army. It has always been the policy of the United States to keep the standing army small and to rely upon the militia for defence in extraordinary emergencies — a policy dictated partly by fear of the possible power of the army, partly by the fact that our geographical position makes the maintenance of a great army unnecessary.

To European eyes [1] our standing army must seem absurdly small. Before 1898 the maximum limit was 27,000 enlisted men. By act of congress passed March 2, 1899, the president was empowered to increase the regular army to 65,000 for a term of two years; and in February, 1901, the new army law fixed the minimum number of men at 57,000 and the maximum at 100,000. The army is organized by dividing it into departments. The departments are made up of one or more brigades; the brigades of three regiments; the regiments, if infantry of twelve companies, if cavalry of twelve troops or companies, if artillery of fourteen companies or batteries. The maximum number of men in a company is one hundred. The president is *ex officio* commander-in-chief; but the actual operations of the army are directed by the lieutenant-general, the officer highest in command. The title of general is an honorary title. The department or the brigade is commanded by a brigadier-general, the regiment by a colonel aided by a lieutenant-colonel and a major, the company by a captain and first and second lieutenants. Non-commissioned officers are first sergeant, sergeant, and corporal.

277. The Militia. In addition to the regular army the defence of the country is provided for by means of the militia. As defined by congress this is made up of all able-bodied male citizens between the ages of eighteen and forty-five. It is partly organized and partly unorganized. The organized portion, known as the national guard, is regularly equipped, drilled, and officered; but this work is done by

[1] In 1911 the armies of Europe on a peace basis were: Germany, 620,000 men; France, 600,000; Italy, 225,000; Austria-Hungary, 387,000; Russia, 1,200,000; England, 257,000; Japan, 450,000.

the states according to the discipline prescribed by congress, and the choice of all regimental officers of the militia is left to the several states. In case they are needed "to suppress insurrections or repel invasions" the president issues a call to the governors of the states, who thereupon furnish the necessary troops. They then become a part of the military force of the United States and are subject to the same discipline as the regular army. Five times the militia has been called out: during the whiskey rebellion, the war of 1812, the civil war, the Spanish war, and to suppress the Philippine insurrection.

278. The Navy. For many years before 1883 the United States navy,[1] as compared with the navies of the old world, was very insignificant. Only for a short period during and immediately after the civil war was it maintained in anything like a state of efficiency. During the last quarter of a century, however, the rapid expansion of our commercial and political relations with distant parts of the world has resulted in the building up of a really efficient navy. The power granted congress to build and maintain a navy implies of course the power to do whatever may be necessary to make it efficient — to enroll seamen, construct vessels, establish navy-yards and docks, furnish supplies and munitions, and provide for the instruction of officers and men in schools or otherwise. In some states a naval militia has been organized. If called into service in time of war, they man vessels for the defence of the harbors, thus freeing the regular naval force for other duties. In the navy the offices of admiral and vice-admiral correspond to that of general in the army, *i.e.*, are honorary titles; neither of these offices is permanently maintained. The office of rear-admiral cor-

[1] The United States navy stands second (1911) with 204 ships of all grades and 51,296 men, Great Britain first, Germany third, and Japan fourth.

responds to that of lieutenant-general in the army. The other officers are commodores, captains, commanders, lieutenant-commanders, lieutenants, lieutenants junior grade, ensigns, and naval cadets.

279. Military Law and Courts. To congress also is assigned the duty of making rules for the government and regulation of the land and naval forces. Accordingly there has been enacted a code called the "military law" prescribing tactics and arrangement of troops, classifying officers and men, regulating their pay, defining military and naval offences, and providing for their punishment by means of special tribunals called courts-martial (*i.e.*, military courts), whose jurisdiction and procedure it establishes.

280. Letters of Marque and Reprisal: Captures. It will be noticed that the same clause that gives congress power to declare war gives it also the power to "grant letters of marque and reprisal and make rules concerning captures on land and water." Letters of marque and reprisal are permits issued by the government of a state in time of war to vessels owned and officered by private persons, giving them the privilege of seizing the property of the enemy wherever found. Such vessels are called privateers and have in past wars wrought great injury to commerce. When our constitution was framed, the custom of granting letters of marque and reprisal was general; but in 1856 an agreement was entered into by most of the great European powers that privateering should be abolished. Neither Spain nor the United States was a party to this agreement, and at the breaking out of the Spanish-American war the question of permitting privateering came up. Our government decided to observe the agreement of 1856. Spain, on the other hand,

declared in favor of granting letters of marque and reprisal, though none was actually granted. It seems hardly likely that our government will ever again resort to this method of naval warfare. The rules laid down by congress in regard to captures are briefly as follows: captures on land are the property of the government; captures on the water are sold. If the captured vessel is superior or equal in rank to the vessel making the capture, the proceeds are divided among the victorious crew according to the pay of each; if the captured vessel is of inferior rank, half the proceeds go to the government, the rest to the crew.

281. Military Property. We have already seen that in providing and maintaining an efficient army and navy, congress has need of a very considerable amount of military property, such as forts, magazines, arsenals, dockyards, etc. Over all places purchased from the states for the purpose of erecting such structures or any other necessary buildings, congress is of necessity given the right to exercise exclusive legislation. No matter in what state they may be located, they are never subject to state law, except that the states usually reserve the right to serve civil and criminal writs on persons within the ceded territory.

282. Miscellaneous Powers: Naturalization. Besides the powers granted to congress in matters relating to money, commerce, and war, the constitution also confers upon it a number of other powers not easily capable of classification. One of these is the power "to establish a uniform rule of naturalization." Naturalization is the term applied to the process by which persons who have been citizens of one country become citizens of another. Before the adoption of the constitution each state made its own naturalization

laws without much regard to the rules existing in other states. The natural result was confusion, which was remedied by giving this power into the hands of the general government. Until the passage of the XIVth amendment to the constitution some question existed as to what constituted citizenship in the United States. That amendment settled the question by declaring that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." All other residents of the United States are *aliens*.

283. Naturalization Laws. Since the adoption of the constitution congress has passed several naturalization laws. The present law requires that the alien who desires to become a citizen must appear before a court of record at least two years before admission to citizenship and there declare on oath his intention to become a citizen and to renounce his allegiance to any other government. This declaration is then recorded and the applicant is furnished with a copy of the record. Two years later the applicant for citizenship must appear in open court, must furnish proof that he has resided continuously in the United States for five years, and in the state or territory where the court is held for at least one year, and that he has behaved as a man of good moral character. He must then take an oath to support the constitution of the United States and renounce allegiance to any foreign government. If he has held any foreign title or order of nobility, it must be renounced. These facts are then recorded and a certificate of naturalization is granted. The wife and minor children of a naturalized citizen become citizens through his naturalization. Minor children take the citizenship of their parents. Thus children born abroad

to citizens of the United States, either native born or naturalized, are American citizens. Naturalization is denied to Chinese.

284. Postal Service. Another of the miscellaneous powers belonging to congress is the power "to establish post-offices and post-roads." In granting this power the constitutional convention was simply continuing a power that had already been delegated to the general government by the articles of confederation. The postal service is, indeed, so obviously a matter that can be better managed by the general government than by the states that it is not surprising that it aroused little discussion. The members of the convention seem not to have foreseen, however, how vast and important an enterprise the postal system of the United States was to become. The Federalist, discussing this matter very briefly, says, as if half apologizing for troubling the general government with so unimportant a business: "Nothing which tends to facilitate the intercourse between the states can be deemed unworthy of the public care." We shall not, perhaps, be surprised at this attitude, if we remember that in 1790 there were in the United States only 75 post-offices and 1,875 miles of mail routes, and that the total postal revenue was only $37,935; while in 1902 there were nearly 76,215 post-offices, more than 507,540 miles of mail routes, and a revenue of $121,848,047. The United States does not attempt to make its postal system pay a profit, the policy having been for the last half-century and more to conduct it simply on an expense paying basis. As a matter of fact, during most of that period the annual expenditures have been greater than the revenue. Since 1870 there has been every year except two a deficit, that of 1901 amounting to nearly four

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million dollars. The law defines as post-roads "all letter carrier routes in towns and cities, all railroads and canals, and all the waters of the United States during the time mail is carried thereon."

285. Copyrights and Patents. The power to issue copyrights and patents is another power given to congress, the purpose assigned in the constitution itself being, "to promote the progress of science and useful arts." Copyright may be defined as the grant by a government to the author of an intellectual production (book, painting, sculpture, design, photograph, musical composition, etc.) of the exclusive right for a limited time to multiply and dispose of copies of it. A person desiring to secure a copyright on such a production sends to the copyright office immediately after publication two copies containing the copyright notice, in the case of a book or similar publication, and, in case of a work of art, a photograph. A fee of one dollar must be paid to the register of copyrights for recording the title and furnishing a certificate of such record. If the production is a photograph and no certificate is required, the fee is fifty cents. Lectures and other oral addresses, dramatic and musical compositions not reproduced for sale may be copyrighted by paying one dollar and filing one complete copy. A copyright runs for a period of twenty-eight years and is renewable for twenty-eight more. A patent is the grant by a government, to the author of a new and useful invention, of the sole right to make and sell it for a limited term. The inventor who desires a patent must, in his application to the commissioner of patents, declare under oath that he believes himself to be the real author of the invention; must file in the patent office a full description of the article, together with drawings and possibly a model; and must pay a fee of $15 on filing his application and an additional $20 if the

patent be allowed. A patent is issued for a term of seventeen years, and may be renewed for a term of seven years by the commissioner of patents or by act of congress, provided, however, that the inventor has not received an adequate money return.

286. The National Capital. By the same clause of the constitution which gave congress power to control all places purchased for the erection of forts, magazines, etc., power was also conferred upon it to "exercise exclusive legislation . . . over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of the government of the United States." The need for such a provision had been shown by an unpleasant experience suffered at Philadelphia by the congress of the confederacy at the hands of an unpaid portion of the Revolutionary troops in 1783. The failure of the state government to afford the protection asked for had made it clear that the federal legislature must be given the power to protect itself and the seat of the federal government from the possibility of a repetition of such insults. From 1785 to 1790 New York was the national capital. In 1790 the seat of government was transferred to Philadelphia, where it remained until 1800, when it was permanently located in the District of Columbia. This was a piece of territory, originally ten miles square, lying along the Potomac, which was ceded to the United States by the states of Maryland and Virginia to be used as the seat of the national government. About thirty square miles on the right bank of the river were afterward receded to Virginia.

287. The Government of the District is provided for entirely by the federal authorities, the people having no po-

litical rights. The executive officers are three commissioners, two of whom are appointed for three years by the president with the consent of the senate, and one detailed from the corps of engineers of the United States army by the president to serve during his pleasure. They have general charge of municipal affairs, providing for the policing of the District, fire protection, education, etc. All officers other than the three commissioners are appointed by the president. The commissioners have the power to recommend needed legislation, but congress is the legislative body of the District, and all bills relating to it are passed in the regular manner. Congress pays one-half the expenses for the government of the territory; the other half is met by taxation of the inhabitants. The judicial power of the District is vested in a supreme court consisting of six judges appointed by the president for life.

288. Government of Territories. Closely allied to this special power granted to congress to govern the territory in which is located the seat of the federal government, is the power granted it in another article of the constitution "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." It is from this provision that congress derives the authority to govern its territories. We have already seen that before the adoption of the constitution the vast tract of land known as the Northwest Territory, the different portions of which were claimed by several of the states, had been ceded by those states to the general government. Following these cessions the congress of the confederation passed the act known as the ordinance of 1787, providing a government for this vast public domain — an

act that has been called "the most important piece of general legislation of the confederation epoch." It is certain that congress under the articles of confederation had no power to pass such an ordinance, and many writers have declared it of no effect. It matters little now; for the first congress that assembled under the constitution, having been given the authority to pass such legislation, reënacted the ordinance, which has ever since furnished the model upon which the territories of the United States have been organized.

289. Organized and Unorganized Territories. The Spanish-American war, resulting as it did in the acquisition by the United States of a number of insular possessions, most of them containing a population very different in character from that of the states and other territories, has very considerably complicated the problems of territorial government. Previous to that war the territories were simply divided into two classes — organized and unorganized. In the organized territories of Hawaii and Porto Rico the government conforms, with slight variations, to the following type. There are the three departments of government, — executive, legislative, and judicial, — with similar duties performed by corresponding departments of state governments. The executive department consists of a governor, appointed by the president with the consent of the senate for a term of four years; a secretary similarly appointed; a treasurer, an auditor, and usually a superintendent of public instruction, appointed by the governor. The governor is *ex officio* commander of the militia. He has a veto power over the acts of the legislature, but his veto may be overridden by a two-thirds vote of the house. He makes

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annual reports to the president and sends a message to the territorial legislature. The legislature consists of two houses, a council and a house of representatives, elected for a term of two years by the voters of the territory, voting in districts. The sessions are biennial and limited to sixty days. The sphere of legislation in the territorial legislature is practically as wide as that of the state legislatures; but congress has the power to annul or modify any act, thus maintaining complete control over the internal affairs of the territory. The people of the territory send a delegate to congress, who has the privilege of debate but no vote. The judicial department consists of a supreme court of three or more judges appointed for a term of four years by the president with the advice and consent of the senate. In the unorganized territory, of which there is now (1909) only one — Alaska — there is no legislature. Instead, the governor, with the assistance of the judiciary or of a council, performs the necessary legislative functions. Congress has enacted a code of laws for unorganized territories.

290. Territories: A New Classification. Since the Spanish-American war a decision of the supreme court has practically established a new classification for the territories. According to this decision there are (1) those constituting "a part of" the United States, and (2) those "belonging to" the United States. To the first class belongs Alaska; to the second, Hawaii, Porto Rico, the Philippines, Guam, and the Samoan possessions, the island dependencies of the United States. Hawaii and Porto Rico have been given organized territorial governments conforming in a general way, though not completely, to the

type existing in the organized territories constituting "a part of" the United States. The other territories "belonging to" the United States are variously governed by the military or naval authorities or by special commissions.

291. Power to Establish Courts. One other specific power the constitution intrusts to congress — namely, the power "to constitute tribunals inferior to the supreme court." In accordance with this grant of power, congress created by the judiciary act of 1789 the district courts and the circuit courts and defined their functions. In 1855 it established the court of claims, and in 1891 the circuit courts of appeals.[1]

292. The Elastic Clause. So far we have been dealing with specific powers granted to congress by the constitution. There remains to be considered a very important clause, often called the "elastic clause," conferring upon congress by a general grant of power the right to do whatever may be necessary and proper for carrying out the provisions of the constitution. The exact wording of the clause is as follows: Congress shall have power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is out of the difference of opinion as to the interpretation of this clause that the two great schools of constitutional construction have arisen, the strict constructionists and the liberal constructionists, the defenders of the doctrine of state rights and the upholders of the opposing doctrine of implied powers. The first insist that the constitution, and in particular this clause of it,

[1] For a description of the character and functions of these courts, see §§ 384–399.

should be strictly and narrowly construed, so as to give congress power to pass only such laws as are absolutely necessary in order to make effective the powers expressly granted. The liberal constructionists, on the other hand, maintain that by the phrase "laws which shall be necessary and proper" is meant, not only such as are indispensable to the exercise of the powers granted congress, but all such as are in any way conducive to their complete execution. The decisions of the supreme court, when that body has been called upon to settle constitutional questions arising under this clause, have in general been made on the principle of liberal construction.

293. Special Powers of Each House. We come now to the consideration of certain special powers granted to each of the two houses of congress, but not to congress as a whole. We have seen that each house is given the power of controlling its own organization and members; but there is given to each in addition certain important governmental powers. The special powers possessed by the house of representatives are three in number — the power to initiate all bills for raising revenue, the power of impeachment, and the power of electing the president in case no choice is made by the electors. The special powers of the senate are (1) the power to ratify treaties and to confirm presidential appointments, and (2) the power to act as a court of impeachment.

294. The House: Revenue Bills. Doubtless the convention in intrusting only to the house of representatives this power of initiating revenue bills was largely influenced by the practice of England, where for several centuries that power had resided in the house of commons. It was felt that the house, being renewed at frequent intervals by pop-

ular election and thus standing more closely in touch with the people than could the senate, ought to be given control of the power of taxing the people. But the convention was influenced also by a less theoretical reason. The larger states, fearful that they might be unfairly taxed if the senate were given equal powers with the house in this matter, demanded this provision as a protection and also as a compensation for having yielded to the senate the right to ratify treaties and to try impeachments. By the same clause, however, the senate is given the power to propose or concur with amendments to revenue bills, a power of which it avails itself so freely, that most money bills, whether for raising revenue or expending it, are finally passed only by means of conference and compromise between the two houses. There is no constitutional provision that appropriation bills (bills for the expenditure of money) should originate in the house, but as a matter of custom the important general appropriation bills do originate there.

295. The House: Impeachment. In placing the power of impeachment (bringing charges of official misconduct against an official) solely in the hands of the house of representatives the convention was again borrowing indirectly from English practice through the state constitutions. According to the constitution the persons who may be impeached are the president, the vice-president, and all civil officers of the United States, the term civil officers being used here in distinction from military and naval officers, who are subject to military law and whose offences are tried by courts-martial. Since offending senators and representatives may be expelled by a two-thirds vote of their respective houses, it has been deemed unnecessary to impeach them. The offences

for which officers may be impeached are "treason, bribery, or other high crimes and misdemeanors;" but the exact meaning of the last phrase has never been accurately determined. Since the adoption of the constitution there have been seven impeachment trials and two convictions.

296. The House: Presidential Election. The election of the president by the house of representatives has occurred twice — in the case of Jefferson in 1801, and of John Quincy Adams in 1825. In assigning this power to the house of representatives the convention, mindful of the fact that large executive powers (the confirmation of presidential appointments and the ratification of treaties) had been given to the senate, felt that that body should have no voice in the appointment of the executive.

297. The Senate: Executive Powers. Of the special powers of the senate, the two just mentioned — the ratification of treaties and the confirmation of appointments — are executive in their nature; the third — the power to act as a court of impeachment — is judicial. Though the senate was created as a part of the federal legislature, it was at first looked upon principally as an executive body. Hamilton in The Federalist [1] speaks of the executive power as divided between the president and the senate; and the senate for the first five years of its existence conducted itself as an executive body, holding its sessions until 1794 in secret. The senators looked upon themselves to a great extent as ambassadors from the states, and the president and cabinet officers sometimes consulted in person with the senate. Not until after the creation of its standing committees in 1816 did it become in legislation coördinate with the house. At

[1] *The Federalist*, Nos. 64–66.

present we think of the senate as primarily a legislative body; but it may at any moment turn itself into an executive body by going into "executive session." This it does when the subject under discussion is the confirmation of appointments or the ratification of treaties. As a matter of fact, though the penalty for disclosing what goes on behind the closed doors of the senate is expulsion, it has been found very difficult to maintain secrecy, particularly in the matter of the confirmation of appointments. For this reason there has been some agitation in favor of abandoning the "secret" session.

298. The Senate: Working of these Powers. It was the purpose of the convention in giving these powers into the hands of the senate to impose a check upon the power of the president. This it certainly does to some extent, though it is questioned whether the imposition of this check has operated entirely in the interests of good government. The participation of the senate in the treaty-making power, reducing as it does the difficulties always experienced by popular governments in dealing with foreign affairs, has generally been approved by critics of our political arrangements, though even here the requirement of a two-thirds vote for ratification has been criticised as giving too much power into the hands of a troublesome minority. Such a minority, intent upon party or local rather than national interests, may find it possible to postpone indefinitely or prevent altogether the settlement of important foreign affairs. The value of the other executive function intrusted to the senate — the power of confirming presidential appointments — is in general more seriously questioned. It is asserted that the arrangement does not in practice prevent abuses of the presi-

dent's appointing power; that if the president and the majority in the senate are of the same party, the appointments are arranged between them and the real object of the provision is defeated; that if they are of opposite parties, the senate confirms the worst appointments in order to subject the president to hostile criticism in the next political campaign.

299. The Senate: Judicial Function. The only judicial function of the senate is to act as a court for the trial of impeachment cases. The method of procedure is as follows. The charges against the officer impeached are preferred, as we have already seen, by the house of representatives, which prepares articles of impeachment, corresponding to the indictment in ordinary criminal trials. The house then chooses by ballot a number of "managers" to conduct the case before the senate. The senate organizes for this purpose by putting its members under oath to conduct the trial impartially. If the president is being tried, the chief justice acts as presiding officer; in other cases, the president or president *pro tempore* of the senate. A two-thirds vote of the members is required for conviction, the object being to prevent the use of impeachment for party purposes. The accused may appear in person or through counsel, witnesses are examined, evidence taken, and the senate then deliberates in secret session. In case of conviction the only punishment that the senate has power to impose is removal from office and disqualification for further official service under the United States; but the officer is still liable to trial before the ordinary courts, if he has committed any crime. During the trial the accused may continue his regular duties. In case of conviction the president cannot exercise his pardoning power. This power of trying impeachment cases was

not granted to the senate by the convention without objections, but the objections then urged have proved groundless.

300. Limitations upon Congress: Taxation. So far we have been dealing with the powers granted to congress as a whole and with the special powers granted to the separate houses. We come now to some limitations imposed upon congress by the constitution — the things which congress may *not do*. The restrictions laid upon congress in the matter of taxation are two: (1) it may lay no capitation or other direct[1] tax except in proportion to the census; (2) it may lay no tax or duty on exports. If it should do so, however, it is required to levy it in proportion to population, *i.e.*, the amount of revenue to be collected by the tax must be determined, and this must then be apportioned among the states according to population.[2] The prohibition laid upon congress in the matter of taxing exports was a practical necessity. The extent of the country and the variety of its resources make it, and made it even in 1787, practically impossible to lay such a tax without working injustice and hardship somewhere. There was, nevertheless, in the convention a difference of opinion on this point, several holding that the government would be incomplete without a power to tax exports as well as imports.

301. Commerce. Appropriations. The restrictions imposed upon congress in the matter of commerce relate to the slave-trade and to interstate matters. The provision in regard to the slave-trade was the result of one of the com-

[1] The XVIth amendment (1913) provides for a tax of one per cent upon all incomes exceeding $3000 except in the case of a husband and wife living together, one dependent upon the other, when the joint exemption is $4000.

[2] The supreme court decided (prior to the XVIth amendment) that an income tax is a tax upon the property from which the income is derived and is, therefore, a direct tax and was unconstitutional (Art. I, sect. 9, p. lxi).

promises of the constitution already noted elsewhere (§ 216). It will be remembered that in the convention the delegates from the slave-holding and slave-trading states objected to giving congress complete control over commerce, lest the economic interests of their states might suffer by a too sudden abolition of the slave-trade. The debate resulted finally in the concession to congress by the slave states of full ultimate control of commerce in return for a continuance of the slave-trade for a limited period, congress being prohibited from forbidding the traffic prior to the year 1808. In regard to interstate affairs, congress is forbidden to make any regulation that shall give a preference to the ports of one state over those of another, or that shall oblige vessels bound to or from one state to enter, clear, or pay duties in another. Congress is also prohibited from drawing money from the treasury, "but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

302. Other Restrictions: Habeas Corpus. A few other restrictions are laid upon congress with the purpose of securing to the citizens of the United States personal liberty and equality. These are the provisions in regard to the suspension of the writ of habeas corpus, in regard to bills of attainder and *ex post facto* laws, in regard to titles of nobility, etc. The constitution provides that "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it." The writ of habeas corpus is "a guarantee of personal liberty as old as Magna Charta." It is a writ granted by a court requiring a prisoner to be brought before

the court in order that the legality of his detention may be investigated, and that he may be at once liberated if illegally detained. The question as to where the right to suspend the writ is lodged was left unsettled by the constitution. By judicial decision it has been given to congress, but that body may grant the right to the president. In the few cases where the writ has been suspended — namely, during the civil war — the power was exercised by the president.

303. Bills of Attainder: Ex Post Facto Laws. The passing of bills of attainder and *ex post facto* laws is absolutely forbidden by the constitution. Bills of attainder are special legislative acts inflicting capital punishment for high offences such as treason, without a judicial trial. If the punishment inflicted is less than death, the bill is properly a "bill of pains and penalties" rather than attainder. The *ex post facto* law is defined by Chief Justice Marshall as "one which renders an act punishable in a manner in which it was not punishable when committed." English jurists have held that the term applies only to criminal not to civil law, and the United States supreme court has taken the same position; but from the discussion that took place in the convention concerning this point, it would seem that the framers of the constitution meant by *ex post facto* laws all that are retroactive.

304. Titles of Nobility. Finally, "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state." At the time of the adoption of the constitution and even much later there existed a general feeling of an-

tagonism to titles. They were regarded as inseparable from aristocratic and monarchical forms of government, and Hamilton called their prohibition the corner-stone of republicanism. The last part of the provision was inserted to preserve foreign ministers and United States officers from the danger of bribery by foreign governments.

Library References. Macy, chaps. xxvi–xxvii, xxxviii, xl; Macy, *First Lessons*, chaps. xvi–xvii; Dawes, chaps. iii, xv, pp. 129–130, 146–148; Hinsdale, chaps. xxi–xxii, xxv–xxvi, pp. 330–333; Fiske, pp. 228–229, 254–257, 263–268; Bryce, Vol. I, chaps. xi, xvi–xvii, xlvii; Wilson, §§ 1047–1052, 1084; Harrison, pp. 58–67; Curtis, Vol. I, chaps. xxvi–xxvii; Wilson, *Congressional Government*, chap. iii, pp. 230–241, 275–277; Clow, chap. iii; Dole, chap. xvi, pp. 69–71; Alton, chaps. xxiv, xxix; Lalor, Article on *Powers of Congress;* Woodburn, chap. viii, pp. 158–172, 177–182, 211–213, 231–239, 255–257, 305–310.

QUESTIONS ON THE TEXT

1. Why are the general powers of congress enumerated in the federal constitution, while similar powers of state legislatures are not specified in state constitutions?

2. State five powers of congress.

3. Mention three important powers vested exclusively in the house of representatives and give the reason in each case.

4. Has the senate any executive power? Discuss fully.

5. State three purposes for which the government may properly levy taxes.

6. Define taxes. Mention two kinds of taxes and discuss the justice of each.

7. Distinguish between direct and indirect taxes.

8. What are the sources of the revenue of the general government? Does the United States government levy any direct tax at the present time? State in substance the constitutional provision regarding the apportionment of direct taxes among the several states.

9. What are duties? State the manner in which duties are collected. What limitation is there to the powers of congress to levy duties? Give the reason for this limitation.

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10. Distinguish between *ad valorem* and specific duties. Define tariff; reciprocity.

11. What is an excise duty? On what articles are excise duties now laid?

12. Should congress be given the power to regulate commerce? Give reasons for your answer.

13. Define ports of entry. Give the name of one United States port of entry on the Atlantic coast, and one on the Pacific coast.

14. Show the importance of the power possessed by congress to borrow money on the credit of the United States.

15. To what extent is immigration now restricted? What is the object of the restrictions?

16. Show the necessity of the power possessed by congress to regulate interstate commerce.

17. Define bankrupt law. Why is a bankrupt law desirable?

18. Define piracy. Show the importance of the power possessed by congress to define and punish felonies committed on the high seas.

19. Why is the power to declare war vested in congress alone?

20. Define letters of marque; privateer. What name is given to property captured in time of war? What disposition is made of such property?

21. What is naturalization? Describe the process by which it is secured in this state. Is the process uniform in all the states?

22. Define alien; citizen. What differences exist in the duties, rights and privileges of aliens, naturalized citizens and natural-born citizens?

23. What classes of foreigners are refused citizenship in the United States? Why?

24. On what ground has the United States claimed the right to interfere when railway traffic has been interrupted by strikes?

25. What is a copyright and how is it obtained? State for how long a time it is issued. State its purpose. May it be renewed?

26. What is a patent? For how long a term is a patent issued? How may it be renewed? What is the purpose of granting patents?

27. Mention the chief peculiarity in the government of the District of Columbia. Explain the importance of congressional control over the District of Columbia.

28. In what body is the government of a territory vested? What representation has a territory in congress?

29. What is the restriction in the constitution regarding the origin of revenue bills? What is the object of this restriction?

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30. Define impeachment. What officers of the United States are subject to impeachment?

31. Mention (1) two powers of the senate not possessed by the house of representatives; (2) one power of the house not possessed by the senate.

32. What is meant by executive session? Which body of congress holds executive sessions? Mention two purposes for which executive sessions are held. On what ground is their abolition advocated?

33. Define treaty. Show the importance of the power of the senate to ratify or reject treaties made by the president.

34. Show the importance of the power of the senate to reject nominations made by the president.

35. In whom is vested the power to try cases of impeachment? Give an account of the national court for the trial of impeachments as to jurisdiction and method of procedure.

36. Mention five restrictions imposed on congress by the constitution.

37. What application of the constitutional provision regarding the apportionment of direct taxes was recently made by the supreme court in regard to the income tax law?

38. Give the provision of the constitution in regard to (1) privilege of the writ of habeas corpus, (2) bills for raising revenue, (3) drawing of money from the treasury.

39. Define appropriation. Show the importance to the people of the constitutional provision regarding appropriations.

40. Define writ of habeas corpus. Explain the importance of this writ as a protection to the right of personal liberty.

41. Define bill of attainder.

42. What is an *ex post facto* law? Are there any such laws in the United States? Give a reason for your answer.

43. What is meant by a title of nobility? Why does the constitution forbid congress to grant such a title?

44. Is an income tax a direct tax under the constitution? State your authority.

CHAPTER XXI

LEGISLATIVE DEPARTMENT: ITS WORKING

305. The Senate-chamber. The work of the national legislature is carried on in different parts of the capitol, the senate-chamber occupying a part of the north wing, the chamber of the house of representatives the south. The room occupied by the senate, naturally much the smaller of the two, is rectangular in form, the seats being arranged semicircularly facing the chair of the presiding officer, which occupies a raised marble dais at the end of the room. The seats are arm-chairs, each with its desk. Around the four sides of the room run galleries, one of which is reserved for the president of the United States. The open space back of the senators' chairs is furnished with sofas, and into this senators may bring visitors. The bare aspect of the walls, unbroken by windows, for the room is lighted from above, is somewhat relieved by a few pictures. The democratic senators occupy the right side of the room, the republicans the left; but because of the semicircular arrangement of the seats they face the chair, not each other.

306. Chamber of the House. The chamber occupied by the house is much larger, so large indeed as to make speaking there a difficult task. Like the senate-chamber, it is lighted from above and supplied with huge galleries running round all four sides and capable of seating 2,500 people. As in the senate, the seats of the members, revolving chairs and desks, are arranged in concentric rows about the speak-

er's marble chair on its raised platform. Below and in front of the speaker rests the mace, and here too are seated the clerks and official stenographers, with the sergeant-at-arms to the right. As in the senate-chamber, there is an open space furnished with sofas back of the members' seats, to which certain visitors are admitted.

307. Character of Members. In the character of their members the two houses show a somewhat marked difference, the senate containing a considerably larger proportion of men of superior intellectual capacity, political experience, and personal dignity. The great majority of the senators are successful lawyers, many of whom still practise before the supreme court; and there are many ex-governors, ex-representatives, ex-state judges, and ex-state legislators. In the senate of the 58th congress there were 20 ex-governors, 4 ex-judges, and 33 ex-representatives. This means, that we have in the senate a body of men possessed already of considerable political training, whose political efficiency is sure to be increased by the training they will get as senators. This is not to say that the senate is made up of men different in kind from those in the house. Like the representatives, the senators are for the most part active politicians, who have made their way by means of the ordinary political methods; but the senate, because it confers on its members more power and greater dignity, a longer term of service and a more independent position, has proved more attractive to men of ability and ambition and has been able to draw to itself the ablest of those who have chosen a political career. In the house, as in the senate, lawyers are numerous, though they are for the most part not leaders in their profession. The rest are recruited from the ranks of

the manufacturers, agriculturists, bankers, and journalists. Great railroad men, like great lawyers, are rare, and for the same reason. The attractions of a career in the house are not sufficient to overcome those of a successful practice at the bar or of a great railway business. Unlike the senate, the house of representatives has few very wealthy members, though few are very poor. Taking the house as a whole, it is not made up of men of the highest culture or the widest information, though there is no lack of character, shrewdness, and keen, if limited, intelligence. If they lack breadth of view, it is due to lack of opportunity rather than to natural incapacity.

308. Methods of Legislation. So much for the men by whom the work of national legislation is conducted. Let us now see something of the methods in use in the making of laws. All laws enacted by the national legislature make their first appearance in that body in the form of *bills*. A bill is simply a form or draft of a proposed law, and may be very radically changed before it is finally enacted. The constitution provides for three ways in which a bill, once introduced into the legislature, may become a law. (1) It may be passed by a majority of both houses and signed by the president. This is the normal way. (2) It may, however, after passing both houses, meet with the disapproval of the president. Thereupon it is returned without his signature to the house in which it originated, his objections are entered upon the journal, the bill is reconsidered, and may be repassed by a two-thirds vote of both houses, the vote being taken by yeas and nays. It then becomes a law without the president's signature. (3) It may be passed by a majority of both houses and sent to the president, who may neglect to return it within ten days, Sundays excepted. In

that case, also, it becomes a law without the president's signature, unless congress adjourns in the meantime. The constitution does not, however, attempt to lay down rules as to the means by which congress shall accomplish the work intrusted to it. That body having been created, and its powers and limitations clearly defined, it is left to work out its own salvation and evolve its own methods. As the field of legislation has grown wider and more complicated with the growth of the nation, the methods of dealing with it have also grown more complex, so that we cannot hope here to follow them in detail. We must be content if we can understand clearly the more important features of our system of legislation.

309. Stages of a House Bill.[1] In order that a bill may be enacted into law it must pass through the following stages. First, it must be introduced. If it is introduced in the house, this is done by handing it to the speaker or laying it on his desk, in case it is a public bill; or by handing it to the clerk of the house, in case it is a private bill. When reached in the order of business, the bill is read for the first time by title only and is then referred by the speaker to its proper committee. In the committee the bill comes up for discussion, after which the committee may decide either not to report it at all, to report it so late in the session that no

[1] In the senate the method of procedure is as follows: Each morning the presiding officer of the senate calls for the presentation of bills, resolutions, and petitions, and the senators, each as he may secure recognition, present such bills as they may desire. In presenting a petition the senator states briefly its purport and asks its reference to the appropriate committee. When a bill is offered, it is carried by a page to the clerk's desk, the title is read and an appropriate reference ordered by the presiding officer, unless the senate, by a vote, itself directs the reference.

action can be taken upon it, to report it adversely, or to report it favorably. If the bill is dropped in committee it is, of course, "killed" without actually reaching the house at all. If it is reported adversely by the committee, it is generally dropped by the house without debate, so that in general only those bills that are reported favorably by the committees are actually considered by the house. When reported, it is read a second time, this time in full, and is then placed on the calendar. This does not necessarily mean that it will come up at some definite time for further consideration. It may never get farther than the calendar, its fate depending less upon its importance than upon the skill and energy of the member who has it in charge. If a bill succeeds in reaching a third reading it is read by title only, unless a reading in full is demanded. The question is then put, "Shall the bill pass?" and the debate follows. When the "previous question" is called for, the debate is closed by the member reporting the bill, and the vote is taken. If the bill passes the house, it is signed by the speaker and the clerk and is then taken to the senate. Here it is at once referred by the presiding officer to its appropriate committee, after which it passes through practically the same stages as in the house. If it passes the senate unamended, it goes to the president for his signature; but either house has the power of amending the bills of the other, and an amended bill must be returned to the house in which it originated and the amendment must be accepted before it can be regarded as passed by the two houses. In case either house refuses to accept an amendment of the other, the bill fails to become a law; or a conference committee is appointed, consisting of members from the senate and house committees

concerned with the bill, and a compromise may be agreed upon. The different methods of disposing of bills that have passed both houses of the legislature have already been considered (§ 308).

310. The Committee System. The process of legislation thus described seems comparatively simple; as a matter of fact there is much here requiring explanation and comment. Let us look first at the committee system. It is almost inevitable when a great nation like our own vests its law-making power in a representative body, that that body, if it is truly representative, should attain very considerable size. One of the most difficult problems of representative government is this one of getting large assemblies to perform the work of legislation promptly and efficiently. Two plans for solving the problem have been worked out. One is the plan of having the majority party in the legislative body appoint a small committee of leaders to draft the necessary measures, which are then adopted and intrusted to this group of leaders for execution. These leaders are held responsible. If their measures meet with the approval of the people, they can count on retaining the support of the majority in the representative body. If not, the opposing minority will become a majority and a new group of leaders will be substituted. This is in brief the English plan of solving the problem, the cabinet or ministerial system of government. The other is the plan of dividing the legislative body up into a number of small groups, each with its own field of action and each independent of the rest, the legislative body as a whole having the power either to adopt or reject the suggestions of the groups in regard to the matters intrusted to them. This is the congressional plan of

government, the committee system, by which our legislature accomplishes its work.

311. The Committees.[1] It is impossible here to review the history of the committee system in the United States, interesting though it is. A description of it as it exists and works at present must suffice. There are now in the house of representatives 48 regular committees, and 10 select committees, each constituting what Senator Hoar has called a "little legislature," so far as the management of its own particular business is concerned. In addition to these the house may at any time create select committees for special purposes, such as the conference committee, mentioned above, for the purpose of conferring with a like committee from the senate. The house may also at any time go into "committee of the whole," *i.e.*, the house may resolve itself into a committee, in order to debate more freely some measure then pending. When this is done the speaker calls some other member to the chair and the special rules of the house are suspended. By far the greatest part of the work of congress is done in the regular standing committees, which are appointed by the speaker at the beginning of each new congress, and to which all bills are referred. Among the most important of the standing committees of the house are the committees on rules, on ways and means, on appropriations, elections, banking and currency, accounts, rivers and harbors, judiciary, foreign affairs, and military affairs. In the senate there are 32 standing committees and 12 select committees. There are also three joint standing committees. In the senate, it will be remembered, the committees are selected, not by the presiding officer, but by the senate itself. The

[1] Encyclopedia Americana, Vol. V, Article on the *Congress of the United States.*

most important of the senate committees are those on finance, on appropriations, foreign affairs, privileges and elections, judiciary, and commerce. It is by no means always certain to what committee a bill should be referred, and this may become a matter of considerable importance to the fate of the bill, since, of two possible committees, one may be favorable, the other hostile. The disposition to be made of petitions, memorials, and private bills is indicated on them when they are handed to the clerk by the members introducing them. Other bills are regularly referred to their proper committees by the speaker, but his action may be changed in three ways: (1) by unanimous vote of the house; (2) on motion of the committee claiming jurisdiction; (3) on the report of the committee to which the bill has been referred. If a dispute arises as to the reference of the bill, it is settled by vote of the house.

312. Power of the Committee. When a bill has once been referred, the power of the committee over it is rarely questioned. Committee meetings for the consideration of bills are usually secret, and the public has no means of knowing how individual committee members have voted or what influences have been brought to bear on the committee. Open meetings for taking evidence on the bill and for hearing the arguments of its advocates and opponents are often held; but, unless the measure is one in which public interest is already excited, the newspapers rarely report the proceedings. Nominally the powers of the committee are limited to the consideration of bills submitted to it, *i.e.*, it has no right to initiate bills of its own; but it may and does amend as freely as it chooses the bills submitted, frequently transforming them completely. Moreover, if it desires

legislation on a subject concerning which no bill has been introduced, it can readily procure the introduction of the necessary measure. We have already seen that the committee may practically "kill" a measure by reporting it adversely, by reporting it too late in the session, or by not reporting it at all; and by the employment of one or the other of these methods the vast majority of the bills introduced meet an early death. In the long session of the 56th congress there were introduced into both houses 12,152 bills of which only 1,215 were enacted into law, *i.e.*, about nine-tenths of the measures introduced failed to pass. The house may, if it suspects a committee of "smothering" a bill that public sentiment favors, order the committee to report it, or it may transfer the bill to another committee; but these restraints upon the power of the committee are rarely applied.

313. Reporting Bills. Even after the rigid sifting to which the measures introduced are subjected by the committees, there remains a great number of bills to be reported, and the house can afford but a very limited time for hearing and discussing the report of each committee. With the exception of a few privileged committees — such as the one on rules, the one on ways and means, and the one on appropriations, which may report at any time — each committee is allowed on the average about two hours for making its report for the whole session. This allows an extremely limited time for debate, and the result is that the house is practically forced to adopt the recommendations of the committees in order to accomplish anything at all. The member reporting the measure, usually the chairman of the committee, has the privilege of opening and closing the de-

bate. He is allotted an hour in which to explain and defend his measure. He seldom, however, uses the whole of his time, but "yields the floor" for brief speeches to other members, both friends and opponents of the bill, previously agreed upon. He thus virtually controls the debate. At the end of the allotted period he moves that the report be accepted and at the same time "moves the previous question." This cuts off further amendment and debate, and the bill is voted upon.

314. Log-Rolling. While it is doubtful whether there is ordinarily any great amount of unmitigated bribery practised in securing legislation, the milder form of political "jobbery" known as "log-rolling" is not infrequently resorted to. This device is used both while the bill is still in the hands of the committee and after it is reported to the house in case there is any danger of its meeting with real opposition on the floor. It is a bargain struck between members, each of whom has "an axe to grind." "You help me with my measure and I'll help you with yours," is the arrangement; and thus votes enough are secured in the committee or friends enough on the floor of the house to pass a measure that would otherwise be rejected.

315. Filibustering. In spite of "log-rolling" and similar devices, however, the course of legislation does not always run so smoothly as the description given above might lead one to suppose. It has happened not infrequently that the opponents of a measure, while not numerous enough to prevent its passage if it were allowed to come to a vote, are still strong enough to obstruct business and prevent its being voted upon, with the object of extorting a compromise from the supporters of the measure. This process is known as

"filibustering." It consists in the making of all sorts of motions that can delay the business in hand — motions to adjourn, motions to take a recess, and calling for the yeas and nays on either of these questions. The last is an extremely effective and annoying means of obstructing business; first, because it consumes so much time, and second, because it is permitted by a rule that the house cannot alter, resting as it does on an express provision of the constitution.

316. Methods of Voting. In order to understand these tactics clearly we must know something of the methods of voting employed by the house. Ordinarily in taking the vote on a question the presiding officer simply calls in turn for the "ayes" and "noes," and judges by the volume of sound as to whether it has been carried or lost. If, however, a doubt exists, a division is taken in one of three ways: either (1) those in favor and those opposed rise successively and are counted by the speaker; or, (2) if he is still in doubt or if a count is called for by one-fifth of those present, the speaker appoints two tellers, who stand in the middle gangway and count, as the members pass between them, first those who vote in the affirmative and then those who vote in the negative; or, (3) if the yeas and nays are demanded by one-fifth of those present, that method is adopted. The clerk calls the roll of the house, each member who votes answering aye or no to his name. This usually consumes an hour or more. The roll is then called a second time in order to give those an opportunity to vote who did not vote on the first call, or to allow others to change their votes. Since the constitution provides that the yeas and nays must be taken on *any* question — questions of adjournment as well as questions of substance — at the demand of one-fifth of

those present, it is easy to see how potent a means of obstruction this may be made.

317. Restraint of Filibustering. Of late the house has adopted somewhat stringent rules to prevent filibustering, rules as stringent, perhaps, as are at all necessary. It should be remembered that it is a method that can be used successfully only by a large minority, fertile in expedients; and that the minority party will rarely combine for this purpose except on important questions. Moreover, if the question is one in which public interest has been awakened, the party that employs such obstructive tactics renders itself liable to popular disapproval, a risk that it is rarely willing to take. Since, in extreme cases, the device of "filibustering" may be used as a safeguard against the abuse of the system of closure of debate by means of the "previous question," perhaps it would not be wise to prevent its employment altogether, even if that were possible.

318. Closure of Debate. In a legislative body so large as the house of representatives, it is necessary that every possible means of expediting business be employed. We have already seen that one such means is found in the adoption by the house with little serious question of the recommendations of the committees. Another is the system of closure of debate just mentioned. The debate is usually closed by "moving the previous question" in the form, "Shall the main question now be put?" If this is ordered (and the motion for the previous question cannot itself be debated) the house must at once proceed to a vote on the main question. Any member may move this closure of debate without permission from the speaker, and it may be passed by a bare majority of those present. In the senate no rule of closure

exists, the small size of the body and its sense of its own dignity both operating to make such a rule less necessary than in the house.

319. Advantages and Disadvantages of the Committee System. In the foregoing discussion of the committee system it has already been suggested that it possesses both advantages and disadvantages. These may now be pointed out more definitely. Its chief advantages are:

(1) It kills off worthless bills at an early stage of their existence, thus preventing waste of time on the part of the house.

(2) Through it the house can accomplish vastly more legislation than would be otherwise possible, though it runs the risk of accepting the bad work of its committees as well as the good.

(3) It promotes specialization in legislative work. Under it each leader in the house may be assigned the work for which he is specially fitted, and every subject of legislation may be put into the hands of those members who know most about it.

(4) It makes it possible for congress to subject the administrative departments to investigation at any time. The committee cannot punish the departments for maladministration, but it can make public the condition of affairs and subject them to public censure.

(5) It makes possible coöperation between the executive and the legislative departments. Cabinet members cannot urge their measures on the floor of the house but they may do so before the committees.

On the other hand the following disadvantages of the system have been cited: (1) It breaks up the unity of the

house; (2) it cramps debate; (3) it lessens the harmony of legislation; (4) it facilitates corruption; (5) it reduces responsibility; (6) it dissipates the ability of the house into independent groups; and (7) it lowers the interest of the nation in the proceedings of congress.[1] How the evils of our committee system are to be remedied while its advantages are retained is one of the problems of practical politics for American citizens.

320. The Speaker. One more striking feature of our legislative system is the power over legislation intrusted to the speaker of the house of representatives. One writer calls him "the second, if not the first, political figure in the United States;" while another says of him that he is "the most interesting and important legislative officer in the American Commonwealth, if not in the world." We borrowed our speaker from the English house of commons, but we have radically changed his character. The English speaker, no matter what his political affiliations or his standing in his party before election, must immediately on election forget his party and become simply a fair and judicial presiding officer. The American speaker, on the other hand, is, and is expected to remain, a party leader, using his office for party purposes. This does not mean that he is privileged to use unfair means for furthering party projects or that he may wrest the rules of the house from their obvious meaning in order to secure a party advantage; but he may make the fullest possible use of any means that his office legitimately places in his hands for furthering the interests of his party.

321. Sources of His Power: Appointment of Committees. Formerly the speaker's power over legislation was derived

[1] Woodburn, pp. 284 *seq.*

in three ways: (1) through his power of appointing committees; (2) through his power of granting or withholding recognition to a member desiring to address the house; (3) through his position as chairman of the committee on rules.[1] In recent years, however, the speaker has been shorn of much of his former power. This has been accomplished by the house electing its own committees instead of having them appointed by the speaker. Now, both the minority and the majority members of the various committees are nominated by their respective parties in the house and elected by vote of all members of the house. Furthermore, the speaker is no longer a member of the rules committee. Others there are who would further limit the power of the speaker by making him merely a presiding officer either chosen by the house outside of its membership, or directly by the people at presidential elections. The president of the senate is not a member of the senate and is chosen by the people. This fact furnishes the basis for the suggestion above outlined relating to the speaker of the house.

322. Recognition. Through the speaker's power of recognition he exercises almost as much influence over the course of legislation as through his former power of appointing the committees. Originally the rule was that the speaker should recognize the member who first asked for recognition. In present practice there are few limitations on his power to recognize whom he pleases. Ordinarily it is customary for him to recognize the chairman of the committee, *i.e.*, to recognize a committee in the person of its chairman, in

[1] In 1910 each party nominated its own representatives on the rules committee, and the speaker was not made a member; in 1911 the ways and means committee appointed the remaining house committees.

preference to an individual member. Similarly, while a bill is passing through its various stages, preference is given to the member who has it in charge. Custom has placed upon him a few other restrictions also, but in emergencies he may use his power of recognition in such a way as to give him absolute control of legislation. He may prevent a measure to which he objects from being voted upon at all by refusing recognition to any member who wishes to bring it to a vote. The only real limitation upon his absolute power in the matter of recognition is the possibility of calling down upon himself the disapproval of his own party members.

323. Committee on Rules. The committee on rules consists of only five members, three from the majority party and two from the minority, but a committee which has in recent years become by far the most powerful one in the house. Its three majority members are the ablest and most experienced members of their party, the party leaders. Under existing rules this small committee has absolute power to decide what business shall come before the house. This it does by means of its exclusive power of initiating the *special order* (an order of the house naming a special time for the consideration of a measure). The power of the committee has, of course, been given to it by vote of the majority in the house and could be taken away from it in the same manner. That it is permitted to retain it is due to the fact that some such directing committee is necessary to enable a body so large to accomplish its work. This committee is now chosen by the house in the same manner as are the other standing committees.

324. The Party Caucus. One other agency employed by

congress to facilitate the work of legislation should be noticed. This is the organization of parties in congress. If we are to have efficient and successful party government, it is clear that some sort of organization is necessary. The party must devise some means of informing its members of its wishes in regard to the measures to be voted on, some means of securing united action from its members on important questions, some means of noting changes of opinion among its members. This work is accomplished by means of the party caucus. At the beginning of every congress caucus committees are chosen, whose business it is to call the caucus meetings and to act as general party managers in the legislature. In matters of minor importance party members are allowed a good deal of freedom; but if a measure is deemed important enough to require concerted party action, it is made a "caucus measure." A meeting of all the party members is called and all the force of party influence is exerted to secure a unanimous party vote. The member who "goes into caucus" on a measure is considered in honor bound to vote upon it in the house in accordance with the wishes of his party, and "bolting" is very rare.

325. The Necessity for Expediting Business. We have seen something of the way in which the house works and of the variety of agencies it employs for expediting business. The necessity for the employment of such agencies becomes obvious when we consider how very large is the number of bills introduced every year. In the 37th congress (1861–63) 1,026 bills were introduced. In the 57th there were 22,000. The proportion of those that pass is, of course, very small. The vast majority never reach a third reading. Many bills are introduced in the expectation that they will be "buried"

in committee or on the calendar. They are introduced to satisfy a constituency, to gratify some private or local interest, and the house understands well enough what their fate is to be. Most of the bills introduced are private bills — local or personal in character, bills for satisfying claims against the government, granting pensions, etc.

326. Contrast between the Houses. More than one writer has described the impression made upon him on seeing congress at work, and all have noted the contrast between the two houses. About the senate there is an air of gravity and dignity. It has been described as making somewhat the impression of a diplomatic congress. At the same time it is "modern, severe, practical." "The faces are keen and forcible as of men who have learned to know the world and have had much to do with it." The house, on the other hand, makes a general impression of disorder, due in part to "the raising and dropping of desk lids, the scratching of pens, the clapping of hands to call the pages, . . . the pattering of many feet, the hum of talking on the floor and in the galleries;" but due in part also to an "absence of dignity both in its proceedings and in the bearing and aspect of individual members." Yet it may be questioned whether the house is not after all in some respects the more impressive body of the two. Mr. Bryce says of it:

"This huge gray hall, filled with perpetual clamor, this multitude of keen and eager faces, this ceaseless coming and going of many feet, this irreverent public, watching from the galleries and forcing its way onto the floor, all speak to the beholder's mind of the mighty democracy, destined in another century to form one-half of civilized mankind, whose affairs are here debated. If the men are not great, the in-

terests and the issues are vast and fateful. Here, as so often in America, one thinks rather of the future than of the present. Of what tremendous struggles may not this hall become the theatre in ages yet far distant, when the parliaments of Europe have shrunk to insignificance?"

327. Desirability of Career in Congress. It would seem as if a career in congress, the supreme legislative body of one of the greatest nations in the world, ought to offer attractions at least equal to those of the professions and the higher spheres of commercial and industrial life. As a matter of fact, however, political life attracts comparatively few of the most highly gifted and ambitious. Not only is the congressman's tenure of his position very precarious, but the position itself offers little opportunity for distinction. The real work of legislation is done in the committee, and the world sees and knows nothing of it. Real merit and ability will gain recognition in congress as everywhere else, provided its possessor is permitted to remain there long enough to make his influence felt, but comparatively few are so permitted. This is particularly true of the house. By the time a new member has mastered thoroughly the procedure of the house his term is at an end, and he has had no opportunity to distinguish himself. If he is returned for more than a second term, he is one of a fortunate few. The position of senator is naturally more desirable than that of representative. He has more power, more dignity, a more permanent and more independent position. In some respects, indeed, the position of senator is the most desirable in the political world. It is more permanent than that of president or cabinet officer, it requires less labor, it involves less vexation by office-seekers; but it is open to only a few. Of those who seek a political

career the great majority must content themselves with the much less attractive work of the house.

Library References. Macy, chap. xxxiv; Macy, *First Lessons*, chap. xvii; Dawes, chaps. iv–v; Bryce, Vol. I, chaps. xii–xv, xix; Hinsdale, chap. xxiv; Wilson, §§ 1061–1062, 1071–1077, 1080–1081; Congressional Directory; Wilson, *Congressional Government*, chap. ii, pp. 168–169, 193–219, chap. vi; Harrison, chap. iii; Alton, chaps. v–vi, viii, xi, xv–xvi, xx–xxiii, xxv–xxviii, xxx–xxxii; Lalor, Article on *Parliamentary Law;* Woodburn, pp. 223–226, 230–231, 257–301, 313–315; Fiske, pp. 228–230.

QUESTIONS ON THE TEXT

1. What are legislative bills? Where may they originate under the national government? What is the difference between a bill and a law?

2. State the provision of the constitution regarding bills vetoed by the president. Give a reason for this provision.

3. Give the different steps by which a bill becomes a law.

4. What are legislative committees? What are their relations to legislation?

5. Explain the necessity of legislative committees. State two evils that may result from transacting business through such committees.

6. State the advantages of committees in legislative bodies. What is meant by committee of the whole? State an advantage of considering a bill in committee of the whole.

7. What power has the speaker of the house over legislation?

8. How is a bill introduced in the senate? in the house?

9. If a committee attempts to smother a bill, how may congress regain possession of it?

10. How is a vote on a bill taken? In cases of doubt, what means may be resorted to?

11. Explain the meaning and use of the following terms as applied to congress: caucus, log-rolling, jobbery, bolting, special order, counting a quorum, filibustering.

12. Which house of congress is the more dignified, and why? Discuss fully.

13. Define the "cabinet or ministerial system" of government; the "congressional or committee system."

14. In how many ways may a committee "kill" a measure referred to it? In what other way may a committee shape legislation?

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CHAPTER XXII

EXECUTIVE DEPARTMENT: PRESIDENT AND VICE-PRESIDENT

328. Executive Department. We come now to the consideration of another of the three great departments essential to every complete government — the executive. We have seen how the constitution provided for the creation and organization of a law-*making* department and endowed it with powers, and we have learned something of the way in which this branch of government has developed in actual practice and of the means by which it performs its functions. It is our task now to ask the same questions in regard to the law-*enforcing* department: how was it created? how is it organized? what may it do? how does it do it?

329. The Convention and the Presidency. The makers of our constitution believed firmly in the separation and coordination of the three branches of government. To a greater or less extent this separation existed in the governments of the various states; and their undoubted superiority to the government of the confederation, in which such executive functions as existed were united with the legislative, was attributed to this fact of separation. The desire to establish a similar separation of powers in the national government with only so much interaction as was absolutely necessary in order to prevent the usurpation of power by any one of the three branches, is seen very clearly in the

THE WHITE HOUSE, THE HOME OF THE PRESIDENT

President Washington selected the site and laid the corner stone of the Executive Mansion at Washington, D.C., October 13, 1792, and lived to see it completed. It was partially destroyed by the British in 1814. After it was restored the stone walls were painted white to obliterate the marks of the fire, hence the name

organization of all of them. It is seen particularly in the creation of what had not before existed, namely, the office of President of the United States. The congress of the confederation had had a presiding officer whom they called a president; but aside from the duty of presiding at the meetings of congress, his function differed not at all from those of his colleagues. He was in no sense the executive head of a government.

330. A Difficult Question. The problems with which the convention struggled in creating and organizing a separate executive department seem to have been in some respects the most troublesome with which they had to deal. Almost every question that arose in connection with the matter called forth serious debate. Whether there should be a single executive or an executive body or council, what should be the length of the term, whether or not the executive should be reëligible, what should be the manner of choice — on all these points widely different opinions were entertained in the convention. One of them, the question as to the method of choice, is said to have occupied a seventh of the whole time of the convention.

331. Plan Adopted. We are now so accustomed in all our governments, national, state and local, to the practice of vesting executive authority in a single person, that the idea of a plural executive seems strange to us; yet in the convention the plan of having a plural executive was warmly advocated. To many of the men of that period the idea of a single executive savored of monarchy, and monarchy they could not abide. It was argued in the convention that the people would never ratify a constitution that provided for a single executive. On the other hand, the failure of the con-

federacy had convinced many that what the country needed above all things was a strong executive, capable of acting vigorously and promptly; and this it was argued could never be secured through a council or assembly. This view finally prevailed and a single executive was agreed to, but the convention took good care to safeguard the liberties of the people in a variety of ways. They devised a mode of election that was intended to make him independent of the national legislature and free to devote himself solely to the interests of the whole people; they made him subject to impeachment and removal in case he betrayed the trust reposed in him; they limited his term of office; they gave the senate a share with him in certain very important executive functions; and they gave the control of the public purse into the hands of congress. It would seem sufficiently obvious that such limitations as these are hardly compatible with monarchical power such as the men of that time stood in dread of; yet it was deemed wise to attempt to prove in The Federalist that no very close analogy existed between the king and the president of the United States.

332. The Qualifications for the Presidency required by the constitution are that the candidate shall be a natural-born citizen or a citizen at the time of the adoption of the constitution, that he shall be at least thirty-five years of age, and that he shall have been for fourteen years a resident within the United States. The clause making eligible those who were citizens at the time of the adoption of the constitution, even though foreign born, has, of course, become inoperative. It was inserted in order not to bar out such men as Hamilton and Wilson, who, though not born within the United States, were among the ablest, most devoted, and

most patriotic citizens of the young republic. The phrase "natural-born citizens" has been interpreted to mean born within the jurisdiction of the United States. Thus children born to American citizens on American vessels in foreign ports, or to our ambassadors, consuls, or other representatives in foreign countries, or to American citizens travelling or temporarily sojourning abroad, do not become ineligible to this office. On the other hand, children born in this country to foreign representatives are not eligible.

333. Term and Reëligibility. Widely varying opinions were held in the convention as to what should be the length of the president's term of office, and the question was closely bound up with that of his reëligibility and the manner of election. Four years was the term fixed by the constitution, and the president was made reëligible. Some suggested three years and many favored a longer term, five, six, seven, and ten years being among the suggestions. Hamilton, in his desire to create a strong executive, favored a life term subject only to removal by impeachment. In general those who favored a long term were also in favor of making the president ineligible for reëlection. Likewise, those who favored his election by congress (for that was one of the modes of election proposed) thought that he ought not to be made reëligible, since that would increase the likelihood of his intriguing with congress for reëlection. While the constitution places no limit on the reëlection of the president, the custom of reëlecting but once has become so firmly fixed that it would be very difficult to change it. Many now question the wisdom of allowing even a second term. They argue that under the present arrangement the president is likely to be more concerned about being president for two

terms than about being a good president for one; and that he will in consequence strive to please the party managers, and only secondarily to serve the people.

334. Salary. While the constitution provides that the president shall receive compensation for his services, it makes no attempt to determine the amount of his salary. It only provides that it "shall neither be increased nor diminished during the period for which he shall have been elected," and that "he shall not receive within that period any other emolument from the United States or any of them." Congress first fixed the salary of the president at $25,000. In 1873 this was increased to $50,000, and in 1909 to $75,000, with an allowance of $25,000 per year for travelling expenses.[1] In addition to his salary the president is given the use of the national "executive mansion," the "White House."

It may be noted in passing that the cost of maintaining the executive branch of our government (including the salaries of the president, the vice-president, and the secretary to the president, together with the expenditures for the care of the executive mansion and a few other items) is extremely small compared with similar expenditures by foreign governments.

335. Election: Methods Proposed in the Convention. These questions of the qualifications, term, salary, etc., of the chief executive were the easiest ones with which the convention had to deal in organizing the executive department. They met the most difficult one when they attempted to devise a method of election. When their work was finished, there was no other part of the constitution that they regarded with so much satisfaction as the plan agreed upon; yet no other part has failed so completely to fulfil the expectations entertained of it. In the convention almost every

[1] The emperor of Germany has a salary approximately of $3,850,000; the king of England, $2,350,000; the president of France, $120,000 and $120,000 for expenses.

possible method of choice was proposed. Some proposed that the president be elected by congress; others that he be elected by the executives of the states; others by the state legislatures; others by electors chosen by the state legislatures or by the people. Mr. Wilson of Pennsylvania proposed direct election by the people, apologizing at the same time for his suggestion, because he felt that it would appear chimerical to the convention. If there existed in the convention a deep-seated fear of monarchy, there was an almost equal distrust of pure democracy. It was not believed that the people would possess the information or the discernment necessary to enable them to choose the best man for the place; it was thought that they would be too much at the mercy of demagogues, and that, moreover, to leave the decision of so important a matter in their hands might result in tumult and disorder. On the other hand, if the choice were left to congress or any other preëxisting body that could be tampered with beforehand, there would be danger of intrigue and corruption. The convention deemed it desirable that the people should have some voice in the matter; but they thought it wise to place the immediate election in the hands of a specially chosen electoral college, who, after due deliberation, should choose as wisely as possible. Hence the double mode of election.

336. Method Chosen. As originally wrought out in the constitution, this method was as follows: Each state was to select, in whatever manner the state legislature might direct, a number of electors equal to the number of its senators and representatives in congress, but no United States officer was to be eligible to an electorship. The electors were then to meet in their respective states on a day fixed by law and

vote for two persons, one of whom was to be an inhabitant of some other state than their own. They were then to send sealed to the capital a certified list of the persons voted for with the number of votes received by each, and these lists were there to be opened by the president of the senate in the presence of both houses and counted. The person receiving the highest number of votes, provided that number were a majority of the whole number of electors, was to be president, and the person having the next highest number was to be vice-president. If two candidates had an equal number and that number a majority, or if no candidate had a majority, the house of representatives was to choose the president, in the first case from the two that were "tied," in the last case from the five highest on the list. The house was to vote by states, the whole representation from each state voting as one, two-thirds of all the states constituting a quorum, and a majority of all the states being necessary for election. In case of a tie for vice-president the senate was to elect that official.

337. A Defect Discovered. It will be noticed that according to this provision the electors might vote for two persons without designating which one they desired for president and which for vice-president. The one receiving the greatest number of votes in excess of a majority was to be president; and the person receiving the next highest number, whether it was a majority or not, was to be vice-president. The result was that in the election of 1800, Jefferson, whom the electors desired for president, received the same number of votes as Burr, whom they had meant to elect vice-president. This gave the power of election to the house, and Jefferson was elected, though not without difficulty.

This incident led to the adoption of the XIIth amendment, which provides the present mode of election.

338. The XIIth Amendment. By this amendment it is provided that the president and the vice-president shall be voted for separately, and that distinct lists of those voted for shall be sent to the capital. The votes are to be opened and counted as provided before; and in case no candidate has a majority, the house is to elect as before, except that they are to choose from the three instead of the five highest. If, when the choice devolves upon the house, that body fails to elect a president before the 4th of March, the newly elected vice-president shall act as president. If the electors fail to elect a vice-president, that duty devolves upon the senate, which makes its choice from the *two* highest on the list voted on for vice-president. In case neither president nor vice-president should be chosen before the 4th of March, the constitution makes no provision for the succession.

339. Another Defect in the constitutional provisions for election became apparent in the election of 1876. In that election there were 369 electoral votes to be cast, 185 being necessary to a choice. Of these Mr. Tilden, the democratic candidate, had unquestionably received 184; while Mr. Hayes had received 164 undisputed votes. In four states, however (South Carolina, Florida, Louisiana and Oregon), with 21 electoral votes, both parties claimed the election. In all of these states both sets of electors had met, voted, and sent up certified returns. The question now arose, "Who shall decide which return is to be accepted?" All that the constitution says in regard to the matter is that "the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and *the votes shall*

†

then be counted." The republicans insisted that the vice-president, a republican, should decide, since he was president of the senate. The democrats maintained that since the count was to be made in the presence of congress, the reasonable inference was that that body was to decide upon the validity of it. In this case, however, the senate was republican and the house democratic, so that the only result of leaving the decision to congress would be a deadlock. The difficulty was temporarily solved by the creation by congress of an electoral commission consisting of five senators, five representatives, and five justices of the supreme court. The vote in the commission, which was made up of eight republicans and seven democrats, was given on strictly party lines and the republican candidate was elected. In 1887 an act was passed by congress requiring the choice of electors to be settled by the laws of the state at least six days before the meeting of the electors. In case such settlement is not effected, the dispute is referred to congress, and if congress fails to decide, the electoral vote of the state is lost.

340. Time and Method of Choosing Electors. The constitution gives to congress the right to determine the time for choosing the electors in the various states, as well as the right to fix the day when the electors shall cast their votes. The only restriction is that the day fixed for the final vote shall be the same throughout the United States. The day first fixed upon by congress was the first Wednesday in December, and the choice of the electors by the people was to occur thirty-four days earlier. Later the time for choosing the electors was changed to the first Tuesday after the first Monday in November; while a still later act changed the

time for casting the electoral vote from the first Wednesday in December to the second Monday in January, the object being to give more time for the settlement of disputed elections in the states. The method of choosing the electors was left by the constitution to the decision of the state legislatures; consequently it would be possible for them to be chosen in a great variety of ways. As a matter of fact, the method is now uniform. Electors are chosen in every state on a common ticket by direct popular vote. At one time the district plan of election was used in some of the states; but this had long been abandoned when, in 1891, it was revived in Michigan by an act of the legislature. The law was contested in the courts, but it was declared constitutional by the supreme court. It was, however, repealed in 1893.

341. Failure of the Electoral College. Such, then, is the method of the presidential election as provided by the constitution and by statute. How does it work in practice? We have seen that in providing the method of double election the framers of the constitution were influenced by the belief that it would secure the choice of men especially fitted for the electorship, who would then, unfettered by outside influence, make the choice that seemed to them the wisest. Naturally they could not foresee the growth of our party system of government, which was to render their carefully elaborated scheme a failure and make of the electoral college a mere machine for registering the choice of the people. For this is what it has become. Every elector has an unquestionable legal right to vote for whom he pleases; but he is bound by a pledge of honor, by a custom as strong as any law, to vote for the candidate of his party. So completely has the

elector become a mere party agent, whose sole business it is to ratify the choice already made, that in general nobody knows and nobody cares what his personal qualifications may be.[1] The voter, when he casts his ballot, is in reality voting directly for the presidential candidate whose name it has been deemed wise, in order to avoid mistakes, to place at the top of the ticket, and only incidentally does he vote for the electors. This failure, however, of the electoral college to retain its power of independent choice is probably not much to be regretted. With the development of the party system the college would have been almost certain to come directly under the control of the party organizations, and it is better that it should vote at the bidding of the people than at that of the party managers, even though the party managers may control the popular vote.

342. A More Serious Defect. Some of the other consequences resulting from the employment of this method of election under the system of party government are more serious. The present system of choosing the electors by general ticket over the whole state makes the election virtually an election by states. The state "goes republican" or it "goes democratic," *i.e.*, it elects, with rare exceptions, its full complement of electors from a single party, and casts the whole number of its electoral votes for the candidate of that party. Now it may happen that in one state the plurality of the winning party is very large and more than overcomes the small adverse pluralities in a dozen states, while the electoral vote of the dozen states is greater than

[1] Divided state delegations are, to be sure, by no means unknown. Occasionally this is due to the rejection of a candidate on personal grounds; more frequently to other reasons. See Woodburn, p. 127, note.

that in the one state giving a larger plurality. For example, in the presidential election of 1900, Idaho, with three electoral votes, gave Mr. Bryan a plurality of 2,448 votes; Kentucky, with thirteen votes, gave him a plurality of 7,975; Nevada, with three electoral votes, gave him 2,516, or a total plurality in the three states named of 12,939; Michigan, with fourteen electoral votes, gave Mr. McKinley a plurality of 104,584. Thus Mr. McKinley, with 91,645 more votes than his opponent received, would have been defeated in the electoral college by a vote of 19 to 14, if the decision had been left to the four states above named. Thus it will be seen that the electoral college may be the means of defeating the clearly expressed wishes of the people. This actually happened in 1888 when Mr. Cleveland received a plurality over Mr. Harrison of 95,534. This verdict of the individual voters was reversed by the electoral college, which gave Mr. Harrison 233 electoral votes as against 168 for Mr. Cleveland. Moreover, under the present plan the struggle is concentrated in a few doubtful states. To win or lose them means to win or lose the election, and this naturally increases the temptation to political corruption in those states.

343. Presidential Succession. The president is removable only on impeachment. Only one president, Andrew Johnson, has been impeached, and he was acquitted. A vacancy in the presidential office may, however, occur in a variety of other ways — by the death or resignation of the incumbent; by his inability, from whatever cause, to discharge the duties and powers of the office; by the refusal of the newly elected president to accept the office, though this is not likely ever to occur. In case a vacancy does occur in any of

these ways, the vice-president succeeds. Further than this the constitution makes no provision for the presidential succession, but the deficiency has been supplied by statute. By the presidential succession bill of 1886 it is provided that in case of the inability of both president and vice-president to perform the duties of the office, the cabinet officers shall succeed in the following order: (1) secretary of state, (2) secretary of the treasury, (3) secretary of war, (4) attorney-general, (5) postmaster-general, (6) secretary of the navy, (7) secretary of the interior. A bill making the secretary of agriculture eighth and the secretary of commerce and labor ninth in the order of presidential succession was introduced in the fifty-eighth congress, but failed to become a law.

344. The President's Powers. What are the president's powers and duties? Just as we saw that to the national legislature are intrusted executive and judicial as well as legislative functions, so also we shall find that to an even greater extent the executive exercises legislative and judicial functions. His executive functions are:

(1) To be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the service of the United States;

(2) To make treaties with the concurrence of two-thirds of the senate;

(3) To nominate and, with the consent of the senate, appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers not otherwise provided for by the constitution or by statute;

(4) To receive ambassadors and other public ministers;

(5) To commission all officers of the United States;

(6) To take care that the laws be faithfully executed.

His legislative powers are:

(1) To sign or veto measures passed by congress;

(2) To inform congress of the state of the union and recommend measures for their consideration;

(3) To call special sessions of congress;

(4) To adjourn congress when the houses cannot agree upon the time of adjournment.

His judicial function is to grant reprieves and pardons and to commute sentences for offences committed against the United States except in cases of impeachment.

345. Classification not Absolute. This classification must not be taken too absolutely, for a moment's consideration will show that some of these powers really fall into two classes. In making treaties, for instance, the president exercises not only executive functions but legislative as well, since treaties are a part of the supreme law of the land. The appointment of judicial officers, also, while it is strictly an administrative act, has a distinctly judicial bearing.

346. His Legislative Powers. Some of these presidential powers require further discussion. Very important are the president's legislative powers. In the power to call extraordinary sessions of congress and to communicate his message he has a real power to initiate legislation. There is no legal bar to his constructing and presenting regular bills to congress, only the custom has never happened to grow up.[1] Instead, the heads of the administrative departments make written reports and public recommendations, have private conferences with the congressional committees, and use their personal influence with party leaders in the house to secure

[1] See Woodburn, pp. 144–145.

the necessary legislation. While the president's annual message may exercise considerable influence on legislation, it does not necessarily do so, particularly if the majority in congress is not of the president's party. The present plan of presenting the president's message is not the original one. Washington and Adams appeared in congress in person and addressed the two houses assembled in joint-session. Jefferson inaugurated the present custom of sending the message to be read in each house by the secretary or clerk, the most frequently alleged reason for the change being that he was a poor speaker. Whatever the reason, the custom has become so firmly fixed that it would be extremely difficult for any president to break away from it.

347. The Veto. The president, however, exercises his most effective power over legislation in a negative way by means of the veto. We have referred before to the president's veto power (§ 308), but we have not studied fully the method of its working. When a bill that has passed the legislature comes to the executive mansion, it is usually sent to the head of the department concerned, or, if there is a question of its constitutionality, to the attorney-general. The president then takes it up with the report of the department, and either signs it or vetoes it in the manner prescribed by the constitution. In case congress adjourns within ten days (Sundays excepted) after sending a bill to the president, he may simply disregard it altogether, neither signing nor returning it. This so-called "pocket-veto," unlike the regular veto, is an absolute one and may be employed very effectively to prevent congress from overwhelming the president at the end of a session with a host of bills. It is just

this hasty legislation crowded into the last few days of a session that needs the most careful scrutiny, and it is well that the president should be given some such power over it as that provided by the "pocket veto."

348. Restrictions on the Veto. The president's regular veto is, of course, a restricted one. In the first place, it may be overridden by a two-thirds vote of each house, *i.e.*, by two-thirds of those present and voting. In the second place, the president must approve or disapprove the bill as a whole. He cannot veto one item or proposition and give his assent to the rest. It is this necessity that gave rise to the custom of attaching "riders" to important bills. The "rider" has been defined as "an unrelated piece of legislation attached to another legislative measure with the purpose of having it ride through on the merits of the measure to which it is attached." They are usually attached to appropriation bills, and virtually say to the president: "Sign this measure or find your own means for running the government." The practice of attaching riders to important bills became common; but it gave rise to serious abuse, and public opinion has condemned it.

349. Working of the Veto. The veto power is an extremely important one and has worked remarkably well. It may prevent inexpedient and unwise legislation, and it must act in any case as an appeal to the sober second thought of congress and the nation. It was never intended to be a positive check upon legislation, nor does it in general act as one, but it does check overhasty legislation. It was originally given to the executive as a means of preventing the legislative department from encroaching on his own powers or those of the judiciary; but it has come to be used on the much wider

ground of general expediency also, and of this public opinion approves. Most of the presidents have made a very sparing use of the power; and where they have employed it freely, their course has in general been approved both by the nation at large and by congress, when it came to reconsider its action.

350. Calling Extra Sessions. The power of calling an extra session of congress or of either house is granted to the president in order to enable him to meet an unforeseen emergency, such as the necessity of the immediate consideration of a treaty, the probability of war, the necessity of preserving the credit of the country or providing funds to conduct the government. The power of convening congress in extra session has been rarely exercised. A special session of the house alone has never been called. Special sessions of the senate are more common, and it has become customary for the outgoing president to call such a session to act upon the nominations for cabinet and other officers which the new president will make immediately after his inauguration.

351. Treaty-making Power. Another very important presidential power that is perhaps more legislative than executive, is the treaty-making power. This power can be exercised only with the concurrence of two-thirds of the senators present. There is also, of course, the implied restriction that the treaty shall be in all respects constitutional. The usual steps in the negotiation of a treaty are as follows. If friendly relations exist between the two nations concerned, the negotiations are conducted at the capital of the one from which the suggestion first came. If this is in Washington, the secretary of state acts for the United States,

and the minister of the foreign country concerned acts for his government. If the treaty is negotiated in some other country, the United States minister to that country, or some other person or persons appointed by the president, act for this government. In either case the president directs the general course of the negotiations. A peace treaty closing a war is generally negotiated in some neutral capital by special commissioners from the two or more nations concerned. After a treaty has been framed, it is sent to the senate, where it is discussed in executive session. The senate may approve it as it stands, may reject it, or may amend it. If amendments are made, they must be accepted by the president and by the other government interested. When it has been finally approved on both sides, duplicate copies are made, signed by the chief officers of both governments, and then exchanged. This is called the "exchange of ratifications." The president then publishes the treaty, proclaiming it at the same time as a part of the law of the land.

352. The Appointing Power conferred upon the president is probably the power that gives him his greatest political influence. The necessity of giving him large appointing powers grows naturally out of the duty laid upon him to "take care that the laws be faithfully executed." It will be seen, however, that the constitution gives congress authority to reduce very considerably the president's power over appointments. "The congress may by law vest the appointment of such inferior officers as they think proper . . . in the courts of law or in the heads of departments." Besides the ambassadors and other public ministers, consuls, and judges appointed by the president with the consent of the

senate, a large number of other officers whose positions have been established by law, among them the heads of the executive departments, receive their appointments in the same way. The president cannot, of course, examine personally into the fitness of all his appointments. He must depend largely upon the advice of the heads of departments and upon the recommendations of senators and representatives of his own party from the states in which the office is located. Partly in consequence of this fact there has grown up, in the case of those appointments requiring the confirmation of the senate, a custom that greatly limits the appointing power of the president. This is the custom known as "senatorial courtesy," by which the senate almost invariably refuses to confirm an appointment unless it meets with the approval of one or both of the senators in whose state the office is located, provided those senators are members of the majority party in the senate.

353. The Life of the President is an extremely busy one. Mr. Harrison pictures it thus: "It (the White House) is an office and a home combined — an evil combination. There is no break in the day — no change of atmosphere. The blacksmith, when the allotted hours of work are over, banks his fire, lays aside his leather apron, washes his grimy hands and goes home. . . . There is only a door — one that is never locked — between the President's office and what are not very accurately called his private apartments. . . . The mail that comes daily to the Executive Mansion is very large; in the early months of an administration it is enormous, as many as eight hundred letters being sometimes received in a day. . . . Unless the President is very early, he will find some callers waiting for him as he passes through the

Cabinet room to his office. . . . His time is so broken into bits that he is often driven to late night work, or to set up a desk in his bedroom, when preparing a message or other paper requiring unbroken attention. . . . For the first year and a half of an administration the president spends from four to six hours of each day talking about things he will not have to act upon for months, while the things that ought to be done presently are hurtfully postponed. . . . This is only an outline of a business day and its surroundings, but it will serve, perhaps, to show that the life of the President is a very busy one. What contrariety and monotony! One signature involves the peace of the nation, another its financial policy, another the life of a man, and the next the payment of ten dollars from the National Treasury." [1]

354. Great Statesmen and the Presidency. It is generally admitted that, taken as a whole, our presidents have not been the greatest statesmen that our country has produced. For this a variety of reasons has been assigned. Of those who choose a political career, only a few, and those not necessarily the greatest, find opportunity to commend themselves to their countrymen in such a way as to secure them a nomination to the presidency. The methods of congress in large measure cut them off from such opportunities. Further, really great men are seldom highly popular men. Mr. Bryce has summed up the reasons for the lack of really great men in the list of the presidents as follows: "Great men are not chosen president, first, because great men are rare in politics; secondly, because the method of choice does not

[1] Harrison: "This Country of Ours," pp. 169–179. Since Mr. Harrison wrote this statement a suite of offices has been built for the use of the president.

bring them to the top; thirdly, because they are not, in quiet times, absolutely needed." [1]

355. Executive Power not Perfect. Like every other governmental agency ever created, the arrangements by which the executive power of our government is organized have their defects. It has been pointed out that the supremacy of the office, by far the highest in the gift of the nation, offers too great a stimulus to ambition; that it lures the statesman from the strict path of rectitude and induces him to seek popularity at whatever cost. Again, the frequent recurrence of the turmoil accompanying a presidential election is looked upon by many as undesirable, particularly as such agitation is often wholly unnecessary, the issues being not real ones, but issues manufactured by politicians in order to keep or to gain place. The discontinuity of policy resulting from our frequent change of presidents is also pointed to as a defect. Even when the new president is of the same party as his predecessor, there is likely to be considerable change; and if of the opposite party, there ensue radical changes resulting too frequently in the replacing of tried and experienced men by men new to the work. It is also noted that at the close of each administration there is likely to occur a period of inactivity. The outgoing president hesitates to embark on any new line of policy, since it may be completely changed by his successor.

356. The Vice-President.[2] In the constitution as it was originally adopted the qualifications of the vice-president were not explicitly stated, though the natural implication was that they must be the same as those of the president. By the XIIth amendment, however, it was explicitly stated

[1] Bryce, Vol. I, p. 84.

[2] The salary of the vice-president is $12,000 per year.

that "no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States." The time of electing the vice-president and the length of his term are the same as in the case of the president. His only duties are to preside over the meetings of the senate and to succeed the president. In the senate he is a mere moderator. He has no power of appointing committees and no vote except a casting vote. The office has been generally regarded as of little importance, of so little importance indeed, that capable men have avoided, if possible, a nomination to it. The result is that as a rule obscure and inferior men have been elected to the office. The danger is not inconsiderable that such men may be called upon to fill the presidential chair and discharge the duties of an office for which they were never intended. Five presidents have died in office. It has been suggested that this defect in our system be remedied by giving the vice-president more power, either by giving him a seat in the cabinet, or by giving him a vote in the senate, or by both these devices.[1]

Library References. Macy, chap. xxiii, pp. 139–140; Macy, *First Lessons*, chap. xviii; Dawes, chaps. vi–vii; Fiske, pp. 230, 232–244; Bryce, Vol. I, chaps. v–viii, xx–xxi; Hinsdale, chaps. xxviii–xxxii; Wilson, §§ 1097–1108; Curtis, Vol. I, chap. xxix; Harrison, chaps. iv–x; *Federalist;* Madison's *Debates of the Federal Convention;* Wilson, *Congressional Government*, pp. 43–52, 242–256; Dole, chaps. xiv, xviii; Alton, chaps. x, xii, xvii; Lalor, Article on *Executive;* Woodburn, chap. iii.

[1] See Theodore Roosevelt, "American Ideals," pp. 187–188.

QUESTIONS ON THE TEXT

1. Describe the executive department of the United States government.

2. State the requirements for eligibility to the office of president. Give a full reason for such requirements.

3. State the particulars in which the constitutional qualifications of the president and a member of the house of representatives differ. Account for this difference.

4. What office in the United States is restricted to natural-born citizens? Why this restriction?

5. Give the length of term and salary of the president. Give reasons for a six-year term with no reëlection.

6. Give in substance the provision of the constitution in reference to the compensation of the president.

7. Describe the three methods by which the convention proposed to elect the president. Describe the method adopted, and state why its original purpose has not been accomplished.

8. Explain why the manner provided in the constitution for choosing the president by electors was preferred to other methods that were proposed.

9. How is the vice-president chosen? Over what body does he preside?

10. What is meant by the electoral college? What determines the number of electors to which a state is entitled? To how many electors is this state entitled?

11. State how a member of the electoral college is chosen, and mention his chief duty.

12. Give arguments for or against choosing the president by direct popular vote.

13. Give arguments sustaining the present mode of electing the president and vice-president.

14. Describe the manner of choosing a president in case the electoral college fails to elect. State the limitations under which this is done.

15. Describe the manner of choosing the vice-president in case no person has a majority of all ballots cast by the electoral college.

16. In case of death of both president and vice-president, who then becomes president? State the substance of the present law of the presidential succession.

17. Mention four powers of the president.

18. Mention three leading powers of the president, and give two powers possessed by the president subject to approval by the senate.

19. Mention with reference to the president (1) two executive powers, (2) one legislative power, (3) one judicial power.

20. What judicial power has the president?

21. What is meant by reprieve, pardon, commutation? Explain why the chief executive is given power in these matters.

22. How does the constitution make the president responsible for legislation?

23. What is the president's message? Briefly describe it.

24. Give in substance the provision of the constitution regarding the power of the president to convene and to adjourn congress.

25. What is the veto power? Explain the importance of the veto power in a republic.

26. "The issue is now with congress. Prepared to execute every obligation imposed upon me by the constitution and the law, I await your action." Comment on the powers and duties of the president and of congress, referred to in this extract from President McKinley's message on the Cuban question (1898).

27. What are treaties, and by whom may they be made for the United States?

28. Describe the process of making and ratifying a treaty.

29. In whom is vested the power to appoint ambassadors?

30. Give the constitutional qualifications of the vice-president.

TOPICS FOR DISCUSSION

1. The laws enacted by congress (1910) were regarded "as a presidential victory," since President Taft had recommended the more important of these. Is the tendency to "coerce" congress or to recommend? Is this a tendency on the part of the governor? If so, what will be the ultimate effect upon our form of government?

2. At different times an appeal has been made to senators, representatives, cabinet officers, and even to the president to influence state legislatures to pass certain laws (*e.g.*, the direct primary law in New York state in 1910). Is this an encroachment upon the right of a state to be free in matters of "home rule"?

3. Should the speaker of the house of representatives be also a member of congress, or should he be chosen simply for his ability as a presiding officer and parliamentarian and hold no other office?

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CHAPTER XXIII

EXECUTIVE DEPARTMENT: PRESIDENT'S ASSISTANTS

357. The Cabinet was not, like the presidency, created by the constitution. When the organization of the executive power was under discussion, it was proposed that an executive council be created to act as a check upon the president; and there was also some discussion as to the wisdom of forming an advisory body to assist him, without giving it any power to control his action. Neither of these plans, however, received the sanction of the convention, and the constitution makes no provision for a body possessing the character and functions of the president's cabinet. The only approach to such a provision is found in the clause giving the president the right to "require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." There were, then, to be executive departments whose chief officers were to advise and otherwise assist the president; but it was evidently contemplated by the convention that such assistance would be required from each separately, not that they would be formed into a council for the purpose of consulting and advising upon matters of general administrative policy. The executive departments have been created by acts of congress; but the cabinet with its peculiar functions, though made up of the heads of these departments, is the creation neither of constitutional nor of statute law. Its relations to the president and to

congress have been determined by custom only. It has no legal position as an advisory body, and the president is in no way legally bound by its advice, though its opinion may and usually does have influence with him. No official record is kept of cabinet meetings.

358. Relations of Cabinet Officers to President. The head of an executive department is more than a mere administrator of the business of his department. The actual performance of such duties can be intrusted to the assistant secretaries, the heads of bureaus, and minor officials; but the secretary must understand his department as a whole, must know its needs, must see that it is administered in conformity with the policy of the administration. His function as member of the cabinet is even more important than his function as head of the department. He is first of all the president's adviser not only in regard to the business of his own department but in matters of general policy as well. Under our present system of party government, therefore, it is important that there should be harmony in the cabinet, if a policy is to be chosen and consistently pursued. The secretary ought to be not only of the president's political party but also in close personal sympathy with him. It is now thoroughly understood that, if a cabinet member finds himself out of harmony with the president's policy, it is his duty to resign or the president's privilege to remove him. It is for this reason that the president is given so free a hand in the choice of his cabinet, and partly for this reason also that he usually forms an entirely new cabinet upon his accession to office, even though he may be of the same political party as his predecessor. All cabinet members are appointed by the president, nominally with the consent of the senate

(though the senate practically never refuses its consent), and all receive the same compensation, $12,000 per annum. The president alone has the power to remove them.

359. Executive Departments: Organization. The executive departments are very thoroughly organized. They are divided first into bureaus, each with a commissioner at its head, who is directly responsible to the secretary. The bureaus are again divided into divisions, each with its chief of division responsible to the commissioner; while subordinate to these chiefs of division and responsible to them is the great army of clerks employed in the administrative work of the government.

360. Executive Departments: History. Those departments whose heads form the president's cabinet, have been created from time to time by acts of congress, as the need for them became apparent. When the government was organizing under the constitution in 1789, congress created three departments — the department of state, the department of the treasury, and the department of war; and the heads of these departments (called secretaries) together with the attorney-general, whose office was created the same year, formed Washington's cabinet. The department over which the attorney-general has control, the department of justice, was not created until 1870. In 1798 there was added the navy department, naval affairs having been up to this time attended to by the war department; and in 1829 the postmaster-general, whose office had existed since colonial times and whose department had been conducted since its creation in 1794 as a part of the treasury department, was made a cabinet member. The department of the interior was added in 1849. A department of agriculture was organized in 1862, but its head was

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not made a cabinet officer until 1889. Finally, in 1913 the department of labor was established. It will be seen, then, that the creation of a new executive department and the calling of its chief officer into the president's cabinet are not always coincident. The departments have been created in the following order: state, treasury, war (1789); post-office (1794); navy (1798); interior (1849); agriculture (1862); justice (1870); commerce (1903); labor (1913). Their chief officers have become members of the president's cabinet in the following order: secretary of state, secretary of the treasury, secretary of war, attorney-general (1789); secretary of the navy (1798); postmaster-general (1829); secretary of the interior (1849); secretary of agriculture (1889); secretary of commerce (1903); secretary of labor (1913).

361. State Department. The chief cabinet officer is the secretary of state, commonly called the head of the cabinet. At cabinet meetings he occupies the seat of dignity at the right of the president. His chief duty is the conduct of foreign affairs; and since the president, because of the pressure of other business, is compelled to give him a very free hand, he practically controls the foreign policy of the nation, subject only to the restraints imposed by the senate. Thus he is brought much more prominently into public notice than are the other cabinet officers. It is his business, except in cases where special officers have been appointed for the purpose, to conduct all negotiations with foreign countries. He receives the representatives of foreign powers and presents them to the president, conducts all official correspondence with them, carries on all necessary correspondence with United States ministers and consuls to foreign countries, and issues passports to citizens of the United States

who wish to travel abroad. So far his duties are concerned with foreign affairs, but he has also some domestic duties to perform. It is through him that the president communicates with the executives of the states, and to him is given the custody and publication of the laws and treaties of the United States, and the custody of the great seal (the official seal of the United States). He is given three assistant secretaries, and his department is divided into seven bureaus: the diplomatic bureau; the consular bureau; the bureaus of indexes and archives; of accounts; of rolls and library; of appointments; and of passports.

362. Treasury Department: *Financial Duties.* The second of the great executive departments is that of the treasury. It concerns itself principally, as its name implies, with the finances of the nation, but not exclusively, for it performs also a great variety of miscellaneous duties. The principal financial duties of the secretary of the treasury are to estimate the probable revenues and the probable expenditures of the government, and to prepare plans for the creation and improvement of the public revenue. These estimates and plans he submits to congress in his annual report, in order to furnish that body with some sort of guide in the making of appropriations and the imposition of taxes. It is his duty also to superintend the collection of revenue, to issue warrants for the payment of all money from the United States treasury, and to superintend the coinage and printing of money.

363. *Internal Revenue Bureau.* We have already seen that the sources of the national revenue are customs or import duties, and excises or internal taxes of various kinds. Until the outbreak of the civil war, the United States had no

permanent system of internal taxation. Then in 1862 an internal revenue bureau was organized under the treasury department and a commissioner of internal revenue appointed.

364. *The Treasurer.* All money belonging to the United States is in charge of the treasurer of the United States. It is his duty to receive all revenue and to pay it out on the warrants issued by the secretary of the treasury or by a designated assistant, to redeem the notes of the national banks, and to manage the independent treasury system. This system was established by congress at the suggestion of President Van Buren in 1840 for the purpose of making the United States the custodian of its own money instead of depositing it with private corporations; but the law establishing it was repealed the next year, and not reënacted until 1846, during President Polk's administration. Besides the main treasury at Washington, subtreasuries have been established at Boston, New York, Philadelphia, Baltimore, Cincinnati, Chicago, St. Louis, New Orleans, and San Francisco.

365. War Department: *Military Duties.* The war department, as its name implies, has control of the military affairs of the nation; but it acts also as a department of public works, and has contributed not a little toward the advancement of science by conducting the exploring expeditions sent out from time to time by the government. With the exception of the secretary of war and the assistant secretary the principal officers are officers of the United States army. Of those whose duties are strictly or mainly military the most important are the adjutant-general, whose duty it is to issue orders for the muster and the movement of troops, to conduct the correspondence of the department and to

keep the records; the inspector-general, who inspects all military posts, all public works carried on by army officers, all military prisons, and the military academy, and reports as to equipment, discipline, sanitary condition, finances, etc.; the quartermaster-general, who has charge of the clothing and general army supplies; the commissary-general, who attends to the food supply; the surgeon-general, who superintends the medical service; the chief of ordnance, who attends to the supply of arms; the judge-advocate-general, who reviews and records the proceedings of all courts-martial and courts of inquiry, and acts as legal adviser to the department; and the chief signal officer, who superintends all military signalling by means of flags, heliograph, or other devices, and who has charge of the construction and operation of military telegraph lines.

366. *Public Works.* It is through the chief of engineers and his corps that the war department performs in large measure the functions of a department of public works. Under their direction fortifications are located and constructed, bridges and docks are built, and great sums of money are expended annually in improving rivers and harbors.

367. Department of Justice. Though the department of justice was not created until 1870, the office of attorney-general, as the chief officer of the department is called, has existed since 1789. He is the legal adviser of the president and of the heads of departments, has the general supervision of the work of the United States district attorneys and marshals, conducts all suits to which the United States is a party, is in general "public prosecutor and standing counsel" for the United States. The law officers of the various departments are under his direction and control. The work of the de-

partment is very large and the office of attorney-general one of the most important and responsible under the government.

368. Post-office Department (see also § 284). The postmaster-general is the head of the department. The work is divided among four bureaus, each in charge of an assistant postmaster-general. These assistants have the general management of the post-offices, of transporting the mails, of providing for stamps, of managing the finances, of appointing certain classes of postmasters, and of directing the inspectors. They provide for the free delivery and collection of the mail, for a money-order and registry system, for rural free delivery over routes aggregating 1,021,492 miles (in 1912), for a railway mail service, for the establishment of star routes (mail routes other than railways and steamship lines), for a parcel post for packages weighing not over eleven pounds, and for a postal savings bank where deposits of $1 or multiples of $1 up to $500 may be made on the certificate plan, the government guaranteeing the payment of both principal and interest. The rate of interest is two per cent. The postmaster-general has the power of appointing all the officers of the department except the assistant postmasters-general and the postmasters whose salaries are $1000 or more. He may also, with the consent of the president, let contracts for the transportation of mail and make postal treaties with foreign countries.

369. Navy Department. Until the establishment of the department of the navy in 1798, naval matters were looked after by the war department. The navy department has general superintendence of the construction, manning, equipment, and employment of war vessels. These duties it per-

forms by means of seven bureaus, whose heads are naval officers. These are the bureaus of yards and docks, equipment and recruiting, ordnance, construction and repair, steam engineering, supplies and accounts, and medicine and surgery. Their duties are indicated by their names. The supervision of the naval academy at Annapolis and of the naval observatory at Washington is also a part of the work of the department.

370. Department of the Interior. This department, which is under the direction of the secretary of the interior, performs, like the treasury department, a great variety of important functions. There are two assistant secretaries in the department besides six commissioners and two directors. The titles of these commissioners and directors give some idea of the scope and character of the work of the department. They are the commissioner of the general land office, the commissioner of education, the commissioner of pensions, the commissioner of Indian affairs, the commissioner of railroads, the commissioner of patents, and the director of the geological survey.

371. *The Land Office.* The most important bureau of the department is the general land office, which has charge of all the public lands of the United States, and whose duty it is to direct the survey and sales of this property and to issue titles to it. At different periods during its history the United States has in various ways come into possession of vast tracts of territory. The first of these public lands, it will be remembered, was known as the northwest territory, whose cession to the United States by the states claiming it was completed in 1786. Later North Carolina, South Carolina and Georgia ceded their claims to western lands, and since then the government has obtained enormous tracts

by purchase, and by conquest, or by both, and by annexation. Among these additions may be mentioned the Louisiana purchase from France (1803), the purchase of Florida from Spain (1821), the purchase of Alaska from Russia (1867), and the acquisition of extensive territory from Mexico (1848), as the result of the war with Mexico.

372. *System of Surveys.* Under the direction of the land office large portions of this vast domain have been disposed of in various ways. Before any disposal could be made of them, however, it was necessary that they should be surveyed. Accordingly, a system of surveys, known as the rectangular system, was very early adopted. A base and a meridian line crossing each other at right angles were first laid off, and from these the land was divided into rectangular townships, each six miles square. Each township was divided into sections of 640 acres each, and each section into quarter sections. Each section was numbered, and section 16, and later sections 16 and 36, were set apart for the support of the common schools.

373. *Land Grants.* Besides these grants in aid of education, other large grants of public lands have been made to the states for educational purposes. The states have also received from the general government large grants of swamp and saline lands and large grants of other land for purposes of internal improvement. Between 1828 and 1846 the general government granted to the states for the improvement of rivers and the building of canals, wagon-roads, railroads, etc., a total of 162,230,099 acres. Besides these state grants the United States has also given land bounties to honorably discharged soldiers and sailors in return for military and naval service, the grant partaking somewhat of the character

of a pension; and has granted large tracts to railroad companies, in order to promote the construction of railroads and thus develop the country. Many millions of acres have also been given to settlers upon compliance with certain laws requiring them to settle upon and improve the land. Thus great numbers of settlers from the eastern states and from Europe have found homes in the west.

374. *Bureau of Education.* The commissioner of education through his bureau collects statistics as to the condition and progress of education in the various states and in foreign countries, for the purpose of aiding in the establishment and maintenance of efficient school systems. Except in Alaska, the commissioner has only advisory power in the actual operation of the school systems. There he directs their management.

375. *Pension Bureau.* The pension bureau examines and adjusts all claims for pensions or bounty lands given in return for military or naval service rendered in time of war. According to the report of the commissioner of pensions for 1900 there were paid out in pensions for that year approximately $140,000,000. The question as to the advisability of granting pensions so liberally as has been done by our government has been much discussed. Mr. Harrison says of it: "There are two views of the pension question — one from the 'Little Round Top' at Gettysburg, looking out over a field sown thickly with the dead, and around upon bloody, blackened, and maimed men cheering the shot-torn banner of their country; the other from an office desk on a busy street, or from an endowed chair in a university, looking upon a statistical table." [1]

[1] Harrison, p. 285.

376. *Bureau of Indian Affairs.* One very interesting branch of the work of the interior department is that conducted by the bureau of Indian affairs. Up to 1871 the Indian tribes were treated by the government as independent nations; but a law passed that year made them the "wards of the nation." Their interests are now protected under the bureau of Indian affairs by a board of Indian commissioners, whose duty it is to oversee the expenditure of money and inspect the goods purchased for them; by a number of inspectors, who visit the agencies to examine into their condition; and by agents, who with the aid of teachers, mechanics, and farmers, try to promote civilization among them. The Indian schools at Hampton and Carlisle are also under the supervision of the bureau.

377. *Commissioner of Railroads.* It is the business of the commissioner of railroads to receive the reports and to examine the books and accounts of the railroads that have been aided through land grants or otherwise by the government, and to see that the laws relating to the management of those roads are enforced.

378. *Patent Bureau and Geological Survey.* The work of the patent bureau and the process by which patents are secured have been considered elsewhere (§ 285). In addition to the work of the bureaus outlined above, the department of the interior conducts also the work of the geological survey under the immediate control of an officer called a director. The work of the geological survey is to examine the geological structure and to determine the mineral resources and mineral products of the United States. The survey of the forest reserves is also conducted by this bureau.

379. Department of Agriculture. It is the business of the department in general to acquire and diffuse among the people useful information on subjects connected with agriculture. The names of some of the bureaus and divisions convey some idea of the scope of the work. There are the bureaus of animal industry, of plant industry, of forestry, and of chemistry of soils; the divisions of vegetable physiology and pathology, of entomology, of biological survey, of seeds, of botany, and of gardens and grounds; the office of public road inquiries; and the weather bureau. One of the most important services rendered by the department is that performed through the bureau of animal industry, which inspects meat intended for export, inspects live animals, both those intended for export and those imported, inspects diseased cattle, and prevents the spread of disease among cattle. The bureau of plant industry studies plant life with a view to assisting the farmer. It attempts to discover methods of improving crops, introduces new varieties of fruits and vegetables, and studies methods of controlling the spread of weeds and noxious plants. Another important branch of the work of the department of agriculture is that conducted by the weather bureau. Through its agency, daily forecasts and warnings of storms are sent all over the country, and storm signals are displayed at many points along the coasts. The department also supervises numerous experiment stations throughout the country, furnishing them advice and assistance in carrying on experiments, and suggesting lines of investigation. In Alaska, Hawaii, and Porto Rico it has established experiment stations under its own immediate direction.

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380. Department of Commerce. The department of commerce and labor was established by congress in 1903 and the head of the department made a cabinet officer. In 1913 congress created a department of labor, thereby establishing a separate department of commerce. This department now includes the lighthouse board, the lighthouse establishment, the steamboat inspection service, the bureau of navigation, the work of the United States shipping commissioners, the national bureau of standards, the coast and geodetic survey, the bureau of statistics, the census office and all that pertains to it, the fish commission, and the office of commissioner of fish and fisheries. The bureau of corporations has jurisdiction over the Alaskan fisheries and includes a few other boards which were independent before the establishment of this department. The bureau of statistics collects and publishes annually statistics on foreign commerce, a work extremely valuable to members of congress in the framing of tariff laws, in the preparation of special legislation for particular industries, and in negotiating commercial treaties. This department provides for a coast and geodetic survey, by which a survey of the whole coast and all harbors is made for the purpose of locating shoals, rocks, etc., as well as an accurate survey of land lines across the continent; for the location of suitable buoys and lighthouses to mark the dangers to navigation thus ascertained; and for the maintenance of life-saving service for the rescue of those who may be imperiled by disasters on water. This service not only covers the long line of our seacoast but also our larger inland waters as well.

381. Department of Labor. The department of labor was established by congress in 1913 and the head of the depart-

ment made a cabinet officer. Since 1903 the work of this department had been carried on as a part of the department of commerce and labor, which was created in that year. The business of the department of labor is clearly set forth in the law which established it, namely, "to foster, promote, and develop the welfare of the wage-earners of the United States, to improve the working conditions and to advance their opportunities for profitable employment." Whenever in the judgment of the secretary of labor the purposes for which this department was established can best be accomplished, he may act as mediator and appoint commissioners of conciliation in labor disputes. The bureaus of labor statistics, of immigration, of naturalization, and the children's bureau (all formerly a part of the department of commerce and labor) are now made a part of this department. The bureau of immigration prepares and revises all regulations pertaining to immigration, decides cases as to the right of aliens to enter this country, investigates supposed violations of the alien-contract-labor laws, and supervises the work done by the inspectors of immigrants.

382. The Bureau of Corporations has power to investigate the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several states and with foreign nations, except common carriers, and to gather such information and data as will enable the president of the United States to make recommendations to congress for legislation for the regulation of such commerce, and to report such data to the president from time to time as he shall require; and the information so obtained, or as much thereof as the president may direct, shall be made public.

383. Independent Boards and Commissions. In addition to the regular executive departments there have been created at different times commissions and boards, executive in character, though not connected with any of the departments. Among these are the civil service commission and the interstate commerce commission. Special officers or boards exist also for the purpose of conducting the work of the government printing office, of the library of congress, of the Smithsonian institution, of the national museum, and of the bureau of ethnology. The work of the interstate commerce commission has been already described (§ 268). The civil service commission consists of three commissioners, only two of whom may be of the same political party, appointed by the president with the advice and consent of the senate. There are also a chief examiner and a secretary. It is the duty of the commission to provide for competitive examinations to test the fitness of candidates for the civil service, and to regulate and improve that service.

Library References. — Macy, chaps. xxiv–xxv, xxvii–xxxi; Macy, *First Lessons*, chap. xix; Dawes, chaps. viii–ix; Bryce, Vol. I, chap. ix; Fiske, pp. 244–250; Harrison, chaps. xi–xix; Wilson, §§ 1109–1120; Hinsdale, chap. xxxiii; Curtis, Vol. I, pp. 574–576; Congressional Directory; Wilson, *Congressional Government*, pp. 257–275, 277–293; Dole, chap. xiv; Lalor, Article on *State Department*, *Treasury Department*, etc.; Woodburn, pp. 189–193.

QUESTIONS ON THE TEXT

1. Was the cabinet contemplated by the constitutional convention or provided for in the constitution? Discuss fully.
2. Name with their titles the persons composing the president's cabinet. How are the members of the cabinet chosen?
3. Should the cabinet officers have seats in congress? Why?
4. Mention in order of rank the officers composing the president's cabinet; in order of their creation by law.

5. Give the name and the three chief duties of the incumbent of the most important position in the president's cabinet.

6. What are the principal duties of the secretary of state? How is this office filled? Give five duties of the secretary of commerce and labor.

7. Give salary of the secretary of state; of the other cabinet officers.

8. Through what department does the United States conduct its business with other nations?

9. How is the secretary of the treasury chosen? What is the length of his term of office, and what is his salary? What are the chief duties of the secretary of the treasury?

10. Describe the duties of the adjutant-general; inspector-general; quartermaster-general. To what department of government do they belong?

11. Describe the mode of appointment and state the principal duties of the attorney-general of the United States.

12. How many classes of mail are there? What are the postal rates for each? In which class do letters belong? newspapers?

13. What is the basis of the classification of post-offices? By whom are postmasters appointed?

14. What are the principal duties of the department of the interior? Mention the two ways of looking at the pension question as given by ex-President Harrison.

15. What is meant by preëmption of public lands? by a homestead claim? by a timber claim?

16. What direct aid has the United States government given to education in the different states?

17. Mention two duties of the commissioner of education.

18. What officer is at the head of the department of agriculture? Is he a cabinet officer?

19. What officer was last added to the president's cabinet? What is the nature of his duties?

20. What department of the cabinet has charge of taking the national census? How often and in what years is the census of the United States taken? of the state?

21. Describe two of the executive departments of the government, giving the principal duties of each department.

22. What are the duties of the civil service commission? What is the "civil service"? What is the "spoils system"?

23. What is the chief provision of the system of civil service? Give an argument in favor of this system.

THE SUPREME COURT CHAMBER

CHAPTER XXIV

JUDICIAL DEPARTMENT: FEDERAL COURTS

384. Necessity of Federal Judiciary. "Laws are a dead letter without courts to expound and define their true meaning and operation." Under the confederation there existed no separate federal judiciary, and the judicial powers vested in congress were very limited indeed. It had become clear that somewhere in the nation there must exist an authority empowered to interpret the laws and treaties of the United States and to determine whether or not acts passed by congress harmonized with the fundamental law of the land as embodied in the constitution — in other words, to pass upon their constitutionality. It had become equally clear that such interpretation could not safely be entrusted to the state courts. In the first place, such an arrangement would be sure to result in a complete lack of uniformity. The same point might and probably would be decided in ways as various as the courts before which it was brought. In the second place, the state courts were unfitted for the work, both because of the nature of many of the matters in dispute, and because of the character of the parties to federal suits. Matters of a quasi-international character, such as admiralty jurisdiction, are obviously not matters to be properly adjudicated by the courts of any particular state; nor could state courts be completely trusted, because of local prejudices, to do full justice between citizens of their own states and citizens of another, or between their

own states and the federal government. Moreover, state courts, being authorities coördinate with and independent of one another, supplied no means for settling disputes between states. And finally, since the constitution and the federal laws made under it were to be applicable not to the states only but to the individual citizen as well, it was more than ever necessary that a federal judiciary be created to interpret and apply these laws.

385. The Federal Courts. Only one of the federal courts, namely, the supreme court, was directly created by the constitution. It was left to congress to provide such inferior courts as might be necessary; and accordingly, by the judiciary act of 1789, not only was the supreme court organized, but circuit courts and district courts were created and their functions were defined.

Later it was found necessary to establish also a court of claims and a circuit court of appeals; so that the federal judiciary [1] at present consists of the supreme court, the court of claims, the circuit courts of appeals, the circuit courts, the district courts, customs court, and commerce court, besides a number of other courts under the control of congress but differing somewhat from the regular federal courts.

386. The Judges. If the judicial department of the government was to be made separate from and coördinate with the other two departments, it was necessary that the judges should be made as independent of them as possible. Moreover, the makers of the constitution were particularly anxious to secure the independence of the judiciary, regarding this as the surest means of safeguarding the liberties of the people from the encroachments of the legislature and the executive. Accordingly, the constitution provides that "The judges, both of the supreme and inferior courts, shall

[1] In 1909 the Payne-Aldrich tariff law provided for a customs court of appeals to consist of five judges appointed by the president at a salary of $10,000 per year each. For customs court, 1910, see p. 330.

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hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office," *i.e.*, their tenure of office is a life tenure subject to removal only by impeachment, and that is a process rarely resorted to. Four times only since the adoption of the constitution has it been employed against federal judges, and only once against a judge of the supreme court. It is further provided by the constitution that judges of the supreme court shall be appointed by the president with the advice and consent of the senate; and though no distinct provision is made for the appointment of the inferior federal judges, the president appoints them under the provision of the constitution which says that the president shall appoint all officers not otherwise provided for by the constitution or by congress.

387. Jurisdiction: One Class of Cases. The constitution also defines very clearly the classes of cases over which the federal courts may exercise jurisdiction. Over some of these cases jurisdiction has been given to the federal courts because of the nature of the questions involved; over others, because of the nature of the parties to the suit. To the first class belong (1) all cases arising under the constitution, laws, or treaties of the United States; (2) all cases of admiralty or maritime jurisdiction; and (3) controversies between citizens of the same state claiming lands under grants of different states. Over cases arising under the constitution, laws, or treaties of the United States the jurisdiction of the federal courts is not exclusive, *i.e.*, such cases may be begun in the state courts; but in case the decision of the state courts is adverse to federal authority, these

cases can be finally adjudicated only by the federal courts. The reason for the rule is clear. The federal authority must be the final judge of the extent of federal powers. To give the state courts power to render final judgment in such cases would be to make them, and not the United States, the ultimate authority. Over cases belonging to classes (2) and (3) above, the federal courts exercise exclusive jurisdiction. Maritime and admiralty cases, since they affect either commerce or international relations, both of which are regulated by the United States and not by the states, and since decisions in such cases should be uniform, can be properly dealt with only by the United States courts.

388. Another Class of Cases. The cases in which jurisdiction is given to the federal courts because of the nature of the parties to the suit are the following:

(1) Cases affecting ambassadors, other public ministers, and consuls;

(2) Controversies to which the United States is a party;

(3) Controversies between two or more states;

(4) Controversies between a state and citizens of another state;

(5) Controversies between citizens of different states;

(6) Controversies between a state or its citizens and foreign states, citizens, or subjects.

In all these cases the jurisdiction of the federal courts is exclusive. As regards the first of these classes it may be said that since ambassadors, ministers, and consuls are persons having an international character, it would hardly be fitting that cases affecting them should be dealt with by state courts. Similarly, it is not in keeping with the sovereign character of the United States that it should be com-

pelled to sue or to be sued in a state court. In all the rest of these cases it was felt that a state court would be likely to be prejudiced.

389. XIth Amendment. Two of these classes of controversies, (4) and (6), have been so far withdrawn from federal jurisdiction by the passing of the XIth amendment, as to prevent a citizen or citizens of another state or foreign state from suing a state in the federal courts. These provisions were doubtless never intended to give to a private individual the right to sue a state, but rather to give to the state an opportunity to appear as plaintiff in a federal court against citizens of other states. The clause was, however, soon interpreted, in the case of Chisholm *vs.* Georgia, by a decision of the supreme court in 1793, as applying to cases in which a state is defendant also. The decision was received with disfavor and alarm by the states. It was thought that it violated the sense of dignity of a state to be dragged into court as defendant at the instance of a private individual. Accordingly, the XIth amendment was proposed by congress and duly ratified by the states. It provides that "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state." Under this amendment some of the states have found it possible to repudiate their debts with impunity.

390. Transfer of Cases. Any case that has been begun in a state court may be transferred to a federal court, provided the defendant can rest his case on a federal law. The judiciary act of 1789 lays down the rules for thus removing a case from one court to the other. It may be done (1) if the

state court, in judging the case, has decided against the validity of a treaty or a law of the United States or some authority exercised under the United States; or (2) if the state court has decided in favor of the validity of a state law or exercise of authority as against the constitution, laws, or treaties of the United States; or (3) if the state court has decided against a privilege, right, title, or immunity claimed under the United States constitution, laws, or treaties. The reason for the rule is sufficiently clear. No state construction of a federal law can be admitted to be final, if that construction in any way abridges federal authority.

391. Treason. Besides giving to congress power to establish federal courts inferior to the supreme court, the constitution gives into its hands also the power to declare the punishment for treason. It defines treason as follows: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." While granting this power, however, the constitution takes care to safeguard the interests of the individual by imposing some limitations. It is provided that "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court;" and further, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted." Corruption of blood was a punishment sometimes formerly inflicted as a penalty for treason or felony. By it the person attainted was disabled from inheriting any property, from retaining any which he might possess, and from transmitting any to his posterity. In accordance with the power granted it, congress intrusts the trial for treason to a tribunal appointed by

itself and has decreed death as a punishment, or, at the discretion of the court, "imprisonment at hard labor for not less than five years, and a fine of not less than ten thousand dollars."

392. The Supreme Court, as was noted above, was directly created by the constitution, and compensation was provided for the judges; but no limitations were imposed as to the number of judges to be appointed or the amount of salary to be paid to each. These details were left to be determined by congress. The number of judges fixed by the judiciary act of 1789 was six. This number has since been increased to nine, one chief justice and eight associate justices. The chief justice receives an annual salary of $15,000, while the associates receive $14,500 each.

393. The Jurisdiction of the Supreme Court is also determined by the constitution, *i.e.*, the constitution declares in what classes of cases the supreme court has authority to administer justice. It has *original* jurisdiction (the right to entertain an action from the beginning) in all cases affecting ambassadors, other public ministers, and consuls; and in cases to which a state is a party. In other cases it has appellate jurisdiction, *i.e.*, cases may be brought before it from the inferior federal courts, or from state courts under certain conditions before described (§390).

394. The Sessions of the Supreme Court are held annually in Washington, beginning on the second Monday in October. Excepting on Saturday and Sunday, sessions are held daily from twelve to four. The room, formerly occupied by the senate, is a semicircular hall with a low, domed ceiling. Around the room runs a screen of Ionic columns, forming a loggia and supporting a gallery. In front is the bench of the

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court, the chair of the chief justice in the centre, those of the eight associates on the sides. The justices appear in black gowns. The presence of at least six judges is required in order that a decision may be pronounced — a rule that doubtless delays the work of the court to some extent, but secures a thorough consideration of every case. The court goes over each case twice. First the opinion of the majority is ascertained. This is then written out by one of the judges, and is reviewed and criticised by the court before it is adopted as the judgment of the court.

395. The Circuit Courts were established by congress in accordance with the power granted it by the constitution to establish "inferior courts." The United States is at present divided into nine judicial circuits, in each of which court is held annually. To each circuit is allotted one justice of the supreme court, and each has in addition at least two circuit judges, who receive an annual salary of $7,000 each. The justice of the supreme court is required by law to attend court in each district of his circuit at least once in two years. A circuit court may be held either by a circuit judge sitting alone, or by the supreme court justice assigned to that circuit sitting alone, or by the district judge of the district in which the court is held, or by any two of them, or by all of them sitting together.

396. Circuit Court of Appeals. In addition to the circuit courts, a circuit court of appeals for each circuit was established in 1891. The judges of each circuit together with the supreme court justice of the circuit make up this court, and any two of them constitute a quorum. To this court cases may be brought on appeal from the district and circuit courts, and in some classes of cases a further appeal may be taken

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to the supreme court. These courts were established in the hope of relieving the supreme court of some of its work, which had grown extremely heavy.

397. The District Courts are the lowest class of "inferior courts" established by congress. The country is divided into eighty-five judicial districts, including eleven territorial districts, each with its district court. The judges receive a salary of $6,000 per annum.

398. The Court of Claims, established in 1855, consists of a chief justice whose annual salary is $6,500 and four associate justices, each with a salary of $6,000. It holds an annual session in Washington for the purpose of dealing with the claims of private persons against the federal government. Cases may be appealed from it to the supreme court.

399. Other Courts. In addition to these inferior federal courts, congress has under its control also the court of private land claims, consisting of one chief justice and four associate justices, each with a salary of $5,000 per annum; the supreme court of the District of Columbia; and the territorial courts, whose judges are commonly appointed for only four years.

400. Marshals and District Attorneys. In order that the federal courts may execute the powers entrusted to them, there is appointed usually in each district an officer called the United States marshal, whose duty it is to execute the warrants or other orders of the district and circuit courts, and to perform duties corresponding in general to those of sheriff in the state governments. In case the marshal meets with resistance in the performance of his duty, he is entitled to call upon the citizens for assistance. If they cannot or will not help him, or if their help is insufficient, he may apply to the government at Washington for the assistance of United

States troops. Besides this federal sheriff, there is appointed usually in each district also a federal prosecutor called the United States district attorney. It is his duty to institute proceedings against all persons transgressing the federal laws. Both the United States marshals and the district attorneys are under the direction of the attorney-general as head of the department of justice.

401. The Procedure of the Federal Courts is prescribed by congress, subject only to certain limitations imposed by the constitution for the purpose of safeguarding the rights of the individual, such as the provision securing the right of trial by jury in criminal cases.

402. Defects of the Judicial System. The judicial department of our federal government has elicited more applause from critics, both at home and abroad, than has any other department. Yet it is not without its defects. It has been pointed out that in the inferior courts the salaries are in general inadequate, and that in the more populous places the staff is insufficient to cope with the business entrusted to it. Even the supreme court, much as it has been praised, has not wholly escaped criticism. It has been said of it that to a certain extent it feels the touch of public opinion — a tendency that is perhaps inevitable and not wholly to be deplored; and that it has not always followed former decisions, a course that tends to unsettle the law. Its weakest point, however, lies in the fact that congress possesses the power to change the number of judges constituting the court — a power which enables it, if it can secure the coöperation of the president, to "pack" the court. Thus, if congress and the president are determined to secure a certain decision, congress needs only to increase sufficiently the number of

judges, and the president to appoint men who will give the desired opinion, in order to accomplish their ends; but while this course is possible, it is hardly probable.

403. Excellences. On the whole, however, the excellences of our judicial system have far outweighed its defects. It has proved extremely stable; and, through the independence and superior character of the judges in even the inferior federal courts, it has done much to counteract the evils arising from the existence of an elective and ill-paid state judiciary. The supreme court has been most highly praised; and certainly its most grudging critic must admit that it has on the whole kept well out of politics, that its judges have been men of excellent legal ability and the highest moral character, that it has escaped all suspicion of corruption, and has maintained to a remarkable degree its judicial impartiality and its credit and dignity in the eyes of the people.

Library References. Macy, chaps. xix, xxi–xxii; Macy, *First Lessons*, chap. xx; Dawes, chap. x; Hinsdale, chaps. xxxiv–xxxvi, xxxviii–xxxix; Wilson, §§ 1082–1096; Fiske, pp. 260–262; Curtis, Vol. I, chaps. xxviii, xxx; Bryce, Vol. I, chaps. xxii–xxiv; Harrison, chaps. xx–xxi; Wilson, *Congressional Government*, pp. 34–35, 37–40; Alton, chap. xviii; Lalor, Article on *Judiciary Treason;* Woodburn, chap. vi.

QUESTIONS ON THE TEXT

1. Give an outline of the system of the United States courts. How are their members chosen?
2. Explain why judges enjoy longer terms of office under the constitution than officers in the executive and legislative departments of government.
3. How may judges of the supreme court be removed?
4. Mention five classes of cases in which the United States courts have jurisdiction. Define jurisdiction.

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5. Define treason and give its punishment. How may a person be convicted of treason?

6. Describe the organization and state the principal function of the highest court of the United States.

7. What court decides whether a United States law is constitutional?

8. Mention two classes of cases in which the supreme court has jurisdiction.

9. What is meant by original jurisdiction?

10. In what cases has the supreme court original jurisdiction?

11. In whom is vested the power to try cases against foreign ambassadors?

12. State in regard to the judges of the supreme court, (1) number, (2) length of term, (3) salaries.

13. Who is the present chief justice of the supreme court? How long does he hold office?

14. Tell what you can of the United States court of claims.

15. Give arguments tending to establish or to controvert the following: "The constitution follows the flag."

16. Give two defects and two points in favor of the system of federal courts.

Note to Footnote, Page 330

The 61st congress in 1910 created a commerce court of five judges to enforce the orders of the interstate commerce commission, each at an annual salary of $8500. The judges are to be known as circuit judges, thus increasing the previous number of circuit judges by five. After the first appointment by the president, vacancies are filled from the circuit judges by the chief justice of the United States, for a period of five years.

CHAPTER XXV

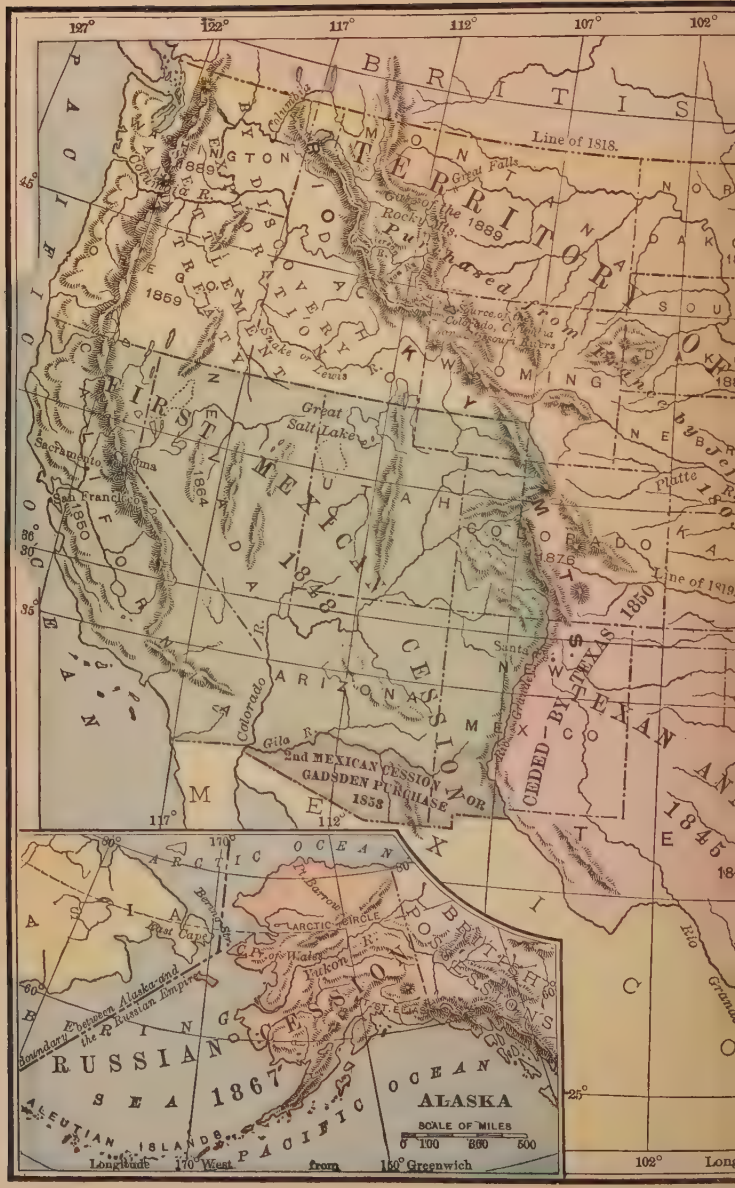
THE STATES IN THEIR RELATIONS TO THE CONSTITUTION

404. Admission of New States. Even before the adoption of the constitution, the admission of new states into the union was contemplated by the general government. The ordinance of 1787 had provided for the formation of states out of the Northwest Territory and for their admission to the union on terms of equality with the original thirteen, and the new constitution contained a provision similar in character but wider in scope. It provided that "New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the congress." When the constitution was framed it was the expectation of the framers that all the territory then belonging to the United States would ultimately be formed into states; and the policy thus entered upon was subsequently extended to the Louisiana purchase and other early additions to the territory of the United States. Since the Alaska purchase, however, and the more recent addition of our insular possessions, serious questions have arisen in regard to the policy to be pursued. The power to admit or to refuse to admit a territory to statehood lies with congress. No community can demand admission as a constitutional right. Neither does admission depend upon population, though in general it is readily granted when the territory

possesses a population as large as that of a congressional district. Sometimes, however, for political reasons, admission is granted to a territory with a much smaller population, as was done in the case of Nevada, which was admitted with a population of only 20,000, mainly for the purpose of securing its vote for the XIIIth amendment.

405. Methods of Admission. Admission to statehood is secured by one of the two following methods: (1) Upon application of the territory, congress passes an "enabling act," authorizing the people to form themselves into a state. The governor then calls a convention of delegates to draw up a constitution, which must contain no provisions repugnant to the constitution of the United States or the declaration of independence, and which must provide for the new state a republican form of government. Sometimes, also, the enabling act has required the new state to give over to the United States all title to unappropriated public lands within the territory, to guarantee religious liberty, and to provide a system of public schools free from sectarian control. When this constitution has been ratified by the people of the territory, the act of congress becomes operative and the territory becomes a state and may elect its representatives in the usual way. (2) Sometimes, however, the territory, before applying for admission, has already elected a constitutional convention and framed a constitution. This it submits to congress for approval, at the same time applying for admission. If congress approves the constitution thus made, it passes an act accepting and ratifying it, and the territory becomes a state.

406. Guarantees to the States: Republican Government. In order to safeguard the interests of the states the constitu-



127°
122°
117°
112°
107°
102°
45°
36°
30°
35°
25°
BRITIS
Line of 1818.
Great Falls
Gulf of the Rocky Mts.
Purchased from France by Jefferson
Source of the Colorado, Columbia and Missouri Rivers
Columbia
Snake or Lewis
Great Salt Lake
Sacramento
Oma
San Francisco
1850
1864
1859
1889
1876
1850
1845
1848
1867
Platte
Line of 1819
Santa Fe
Colorado R.
Gila R.
Rio Grande
2nd MEXICAN CESSION OR GADSDEN PURCHASE 1853
CEDED BY TEXAS
TEXAN AN
MEXICO
PACIFIC OCEAN
ARCTIC OCEAN
Pt. Barrow
ARCTIC CIRCLE
East Cape
Bering Str.
C. Pr. of Wales
Yukon R.
ST. ELIAS
BRITISH POSSESSIONS
Boundary between Alaska and the Russian Empire
RUSSIAN SEA
ALEUTIAN ISLANDS
PACIFIC OCEAN
ALASKA
SCALE OF MILES
0 100 300 500
Longitude 170° West from 150° Greenwich

92°
87°
82°
77°
72°
67°
POSSESSIONS
CANADA
Lake Superior
Lake Michigan
Lake Huron
Lake Erie
Lake Ontario
Kingston
St. Lawrence R.
MAINE
1820
NEW HAMPSHIRE
MASSACHUSETTS
Portsmouth
Boston
CONN.
NEW YORK
Albany
New York
NEW JERSEY
Philadelphia
PENNSYLVANIA
Pittsburgh
Detroit
Chicago
Fort Dearborn
Green Bay
Mackinaw
Mississippi R.
MINNESOTA
1858
WISCONSIN
1848
MICHIGAN
1837
ORIGINAL
AREA
OF THE
UNITED STATES
1783
MASSACHUSETTS CESSION 1785
CONNECTICUT CESSION 1785-1800
NEW YORK CESSION 1781
VIRGINIA CESSION 1784
NORTH CAROLINA CESSION 1790
SOUTH CAROLINA CESSION 1787
GEORGIA CESSION 1802
1846
IOWA
Nauvoo
ILLINOIS
1818
1803
OHIO
Marietta
Cincinnati
Ohio R.
WEST VIRGINIA
1863
VIRGINIA
Cahokia
Kaskaskia
1818
1921
MISSOURI
Missouri R.
KENTUCKY
1792
Louisville
Kentucky R.
NORTH CAROLINA
TENNESSEE
1796
SOUTH CAROLINA
Charleston
Savannah
Savannah R.
Alabama R.
Tombigbee R.
Tennessee R.
Cumberland R.
Arkansas R.
Red R.
Sabine R.
Texas
1845
Ship Island
New Orleans
SPANISH
FLORIDA
1819
ATLANTIC OCEAN
St. Mary's R.
BAHAMA
40°
38°
36°
34°
30°
25°
TERRITORIAL GROWTH OF THE
UNITED STATES
ON THE AMERICAN CONTINENT
1776 TO THE PRESENT TIME
SCALE OF MILES
0 100 200 300 400 500
West from 92° Greenwich 87° 82° 74°

tion provides certain guarantees. First of all it is provided that the United States "shall guarantee to every state in this union a republican form of government." Since the general government was to be a federal republic, it was a practical necessity that that of the states should be of the republican type.

407. Protection against Invasion. In addition to this guarantee to the states it is further provided that the United States "shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence." The necessity of protecting the states from invasion was imposed upon the general government by another clause of the constitution denying to the states the right to maintain troops or ships of war in time of peace. In case of invasion no formal application from the state for the promised protection is necessary. The president is authorized by law to use the army and navy of the United States in such cases, or to call out the militia, without such application.

408. Against Domestic Violence. While the last clause of the above provision guarantees to the states the protection of the general government against domestic violence also, such protection is furnished only upon application of the legislature or of the executive of the disturbed state. The presumption is that every state is capable of enforcing its own laws and that the state is the best judge of its own ability or inability to do so. By the requirement that aid be furnished only on the demand of the state, the general government is deprived of all opportunity to meddle with state affairs under pretext of protecting the state. It has been decided by the supreme court, however, in a case growing

out of the Chicago riots in connection with the great railway strike of 1894, that in case such disturbances interfere with the execution of federal laws, the president may send troops to suppress them without application from the state.

409. Obligations upon the States: Public Records. While the constitution thus guarantees to the states certain privileges, it also imposes upon them certain duties toward each other. It requires that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state;" and further provides that "congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof." Legislative acts are proved or made authentic by the affixing of the seal of the state, and court records by the certificate of the judge, the signature of the clerk and the affixing of the seal of the court, where there is one. It is evident that, unless the legislative acts and court records of one state were accepted in the others, the states would soon be involved in endless confusion and litigation.

410. Privileges of Citizens. Another of the obligations laid upon the states by the constitution is that they grant to the citizens of each state "all the privileges and immunities of citizens in the several states." By this provision a state is prohibited from denying to citizens of the United States coming to it from outside its own borders any of the privileges granted to its own citizens. It must not regard them as aliens; it must not discriminate against them by legislation; it must permit them to come and go as freely, to acquire and enjoy property as freely, as it does its own citizens; it must grant them the same legal protection that it grants its own.

411. Fugitive Criminals. The constitution provides also for the return of fugitive criminals. "A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime." This process of securing the surrender of fugitive criminals is called extradition. The demand or requisition is addressed by the executive authority of the state having jurisdiction of the crime to the executive of the state in which the criminal is found; and it rests with the latter to determine whether the person demanded is a fugitive from the justice of the state making the demand. The requisition is made in official form, by making complaint on oath or by presenting an official copy of the indictment.

412. Limitations of State Power. In addition to guaranteeing to the states certain privileges and imposing upon them certain duties toward each other, the constitution also lays upon their powers certain limitations, denying some powers to them absolutely, others provisionally.

413. Absolute Limitations: Foreign Affairs. Thus it denies to them absolutely the power to do certain acts whose performance by the states would be a practical denial of the supremacy of the national government. It is a function of only absolutely sovereign states to enter into treaties, alliances, or confederations with other powers. To grant such a power to the individual states of the union would be to declare them independent of the general government, hence it is expressly denied to them by the constitution. So also with the right to grant letters of marque and reprisal. This is a part of the war-making power, which belongs to the

whole nation, not to any single portion of it. To grant it to the states would be to subject the whole nation to the risk of being involved in a war at any moment.

414. In the Matter of Money, also, the constitution lays upon the states certain prohibitions. It forbids them (1) to coin money, (2) to emit bills of credit, and (3) to make anything but gold and silver coin a tender in payment of debts. The power of coining money had already been granted to the general government for the sake of securing uniformity in the monetary system. To have left a like power with the states would have been to defeat that end and to leave the confusion as great as it had been before the adoption of the constitution. The other provisions in regard to money were also dictated by the experience of the framers of the constitution during the revolution and under the articles of confederation. When we were studying the condition of affairs under the confederation we saw something of the disastrous effects that followed the issue of bills of credit (promises to pay, *i.e.*, paper money) and of making such bills legal tender.

415. Personal Liberty. The constitution also denies to the states absolutely the power to interfere with the personal liberty and equality of citizens by passing any bill of attainder, any *ex post facto* law, or any law impairing the obligation of contracts, or by granting any title of nobility. All of these prohibitions except that in regard to the passing of laws impairing the obligation of contracts are laid, not upon the states only, but upon the United States as well, and we have already studied their meaning and purpose. The clause regarding the obligation of contracts, like so many others, was the result of experience. Under the confedera-

tion the power of the majority had often been used to change existing laws regulating contracts. The debtor class in particular had employed this means of escaping their burdens and had thus wrought no little injustice.

416. Provisional Limitations. Besides these absolute limitations upon the powers of the states there exist also some provisional ones. Some of these relate to matters of taxation. The states are forbidden, without the consent of congress, to lay any tax upon exports or imports except such as may be necessary in order to pay the expense of inspection. If a tax is laid and the revenue from it exceeds the expense of inspection, all such excess must be paid into the national treasury. The inspection laws of the state are, moreover, subject to the revision and control of congress. The states are likewise forbidden to lay tonnage duties (duties levied on ships according to their carrying capacity) except with the consent of congress. It will be remembered that the regulation of commerce was one of the powers given into the hands of congress. If that power of regulation were to be effective, it was necessary that the laying of import and export duties and of tonnage duties should also be under the control of that body. In the matter of war also the states are forbidden independent action except under certain conditions. They are forbidden to keep troops or ships of war in time of peace except with the consent of congress, or to engage in war, unless actually invaded or in such imminent danger that delay is impossible. The object of these restrictions is, of course, to ensure the safety of the union as against the states. Closely connected with them is the prohibition upon the states to enter into any agreement or compact with each other or with a foreign power, except with the consent

of congress, the object being to prevent any alliance hostile to the union or to the exercise of the powers delegated to the United States.

417. Doctrine of National Sovereignty. Besides stating thus distinctly the limitations, both absolute and provisional, placed upon the powers of the states, the constitution attempts to define still more clearly the relations between the state and the national government as follows: "This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." Moreover, it is further provided that not only every United States officer, but every state officer as well, shall take an oath to support the constitution of the United States. This is the constitutional statement of the doctrine of national sovereignty, the doctrine of the supreme authority of the national government over every state and every individual, which was only fully established by the civil war. In interpreting it we must take into account always the fact that the national government is a government of *delegated* powers, and that "powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people."

418. Division of Powers: Reserved Powers. Let us look a little more closely into the meaning of this division of powers between the state and the national government. In modern free governments all governmental powers must be

conceived of as originating with the people. In our own system some of these powers are exercised by the state authorities, some by the national authorities. Those belonging to the states are nowhere expressly enumerated. In so far as the constitution defines them at all, it does so negatively, either by making specific grants of power to the national government, by laying express prohibitions upon the states, or by reserving certain powers to the whole people. All other powers, without definite enumeration, are reserved to the states. The powers exercised by the national authorities, on the other hand, are powers delegated by the people through specific grants; and within the sphere of the powers thus specifically granted the national authority is supreme. We have already seen that certain specific powers are prohibited to the states and that certain others are prohibited to the United States. It should be noted also that certain powers are denied to both these authorities. Thus the sovereign people in order to preserve certain rights believed to be indispensable, reserved to themselves a sphere within which neither state nor national authority can operate. There are thus two classes of *reserved* powers — those reserved to the states and those reserved to the people.

419. Concurrent Powers. Besides these reserved powers and besides those specifically granted to the national government, there should be mentioned another class of powers known as *concurrent* powers — powers that may be exercised by both state and national government. These concurrent powers arise through the fact that the mere grant of a specific power to the national government does not of itself constitute a prohibition upon the states to exercise such a power.

For example, congress has been granted the power to pass uniform bankruptcy laws and has at various times exercised this power. Several national bankruptcy laws have been passed and repealed. But the states have also possessed and exercised the power to pass bankruptcy laws which, however, cannot apply to existing contracts. To be sure, the operation of all such state laws is suspended, if, or in so far as, they are found to conflict with a national law; but upon the repeal of the national law, the state law becomes again operative, and the state retains as fully as ever its power to legislate upon the subject.

420. Classes of Powers. To sum up, we may follow Mr. Bryce in distinguishing the following classes of governmental powers in the United States:

(1) Powers vested in the national government alone;

(2) Powers vested in the states alone;

(3) Powers exercisable by either the national government or the states;

(4) Powers forbidden to the national government;

(5) Powers forbidden to the state governments.

To these might be added another class — namely, (6) powers vested in the people alone and exercisable only by the difficult process of amending the constitution.

421. Conflicts of Authority. When conflicts of state and national authority arise, it becomes the duty of the courts, and, in the last resort, of the supreme court of the United States, to define the limits of state and national jurisdiction. In making such decisions the courts have followed the rule that the state is presumed to have jurisdiction wherever its powers have not been limited by the United States constitution or its own constitution; while the national government

possesses a particular power only if it can be shown to have been granted, either specifically or by implication, in the constitution.

Library References. Macy, chaps. xxxix–xli; Macy, *First Lessons*, chap. ii; Dawes, chaps. xiv–xv; Hinsdale, chaps. xxvii, xl–xlii, xliv–xlv, xlix; Fiske, pp. 253–258; Wilson, §§ 891–893; Bryce, Vol. I, chaps. xxvii–xxx; Curtis, Vol. I, chaps. xxvii–xxviii, xxxi–xxxii; Vol. II, chap. viii; Wilson, *Congressional Government*, Introduction; Lalor, Article on *State Sovereignty*; Woodburn, pp. 77–87.

QUESTIONS ON THE TEXT

1. By what authority are new states admitted into the union?

2. Describe the process of admitting a new state into the union.

3. State and explain the restriction in the constitutional provisions for the admission of new states.

4. Give the provisions of the constitution by which no state shall pay more than its just share of taxes.

5. Give the substance of the constitutional provision regarding fugitive criminals.

6. A person having committed a crime in one state flees to another state; how may he be captured and returned? What is this process called?

7. Give the substance of the constitutional provision regarding (1) public records; (2) protection to states by the nation.

8. Mention five things that the constitution forbids a state to do.

9. Mention three important powers denied to the states, and give a reason in each case.

10. Mention two governmental powers held by the United States and prohibited to the states. Give a reason in each case.

11. Define legal tender. Is an American trade dollar a legal tender?

12. What is the provision of the constitution regarding the laying of duties on imports or exports by any state? Why is this provision necessary?

13. What prohibition is laid on the states regarding treaties? Give the reason for this prohibition.

14. "The states are forbidden to issue letters of marque, to coin money, to emit bills of credit, to pass *ex post facto* laws, or to make

anything but gold and silver coin a tender in payment of debt." Explain these prohibitions.

15. Give the constitutional provision regarding powers reserved to states.

16. Mention two points of difference between the rights enjoyed by a state and the rights enjoyed by a territory.

17. Give in substance the provision of the constitution regarding the protection to states by the nation.

CHAPTER XXVI

THE BILL OF RIGHTS: THE INDIVIDUAL IN HIS RELATIONS TO THE CONSTITUTION

422. The Bill of Rights. When the constitution was submitted to the people for ratification, one of the chief objections raised against it was that it contained no "bill of rights," no sufficiently explicit guarantee of the rights of the individual against the encroachments of the federal power. Several of the states, while ratifying it, accompanied their acceptance with a recommendation that certain amendments be added, safeguarding the liberties of the individual. Numerous amendments were proposed by the various states, many of them covering the same ground. The first congress passed twelve, of which ten were ratified by three-fourths of the state legislatures, and were declared in force in 1791. These first ten amendments constitute our American bill of rights, so called from their resemblance to the English bill of rights enacted in 1689.

423. Restriction only upon the Federal Government. It should be noted in connection with these first ten amendments that they were designed as restrictions upon the United States, not upon the states, and that they have been so interpreted by the courts. Unless the states are specifically mentioned, it is held that the limitations imposed by the United States constitution are imposed on the national government only. Thus, if a state should by its constitution abolish the right of trial by jury, no national law,

constitutional or statute, would be brought to bear to prevent. The reason for this is clear enough, if we remember the circumstances under which the constitution came into existence. It was framed in the hope of establishing a better government than that of the old confederation, and the government created by it was the national government, not those of the states. Some of the state constitutions existed before the federal, and generally guaranteed to their citizens the rights afterwards provided for in the federal constitution by these amendments. The federal bill of rights was passed in order to secure to the citizens of the United States the rights already guaranteed to them as citizens of the states by their state constitutions; and the limitations of the federal constitution, unless otherwise expressly stated, apply to the national government and to it alone.

424. Classes of Guarantees. Let us look now a little more closely at these limitations which the people deemed it necessary to impose upon the newly formed government, in order to protect the citizen against possible encroachments upon his individual rights. They fall into three main classes: (1) provisions guaranteeing to him the right of personal liberty; (2) those guaranteeing the right of personal security; (3) those guaranteeing the right of private property.

425. The Right of Personal Liberty is secured by the several provisions of the 1st amendment. This attempts to secure, first of all, freedom of religion by providing that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." As we all know, many of the settlements in this country had been made primarily for the purpose of providing a means

of escape from the restrictions of a state church, and in such communities the desire for the separation of state and church was natural. Moreover, in view of the religious intolerance shown by many of the colonies, and the great variety of sects existing there, such a separation provided the only means of avoiding religious disturbances. The amendment also denies to congress the power of "abridging the freedom of speech or of the press." This right of free speech and of a free press is one that our nation has guarded jealously, so jealously that it may be questioned whether the right is not frequently abused. Finally, the amendment provides for securing "the right of the people peaceably to assemble, and to petition the government for a redress of grievances." This "right of petition" had been secured in England by the bill of rights of 1689. It might be supposed that the mere fact of possessing a republican form of government assured such a right to the people of the United States; but they evidently wished to make assurance doubly sure by making the provision a part of the constitution. The right of peaceable assembly was not generally recognized in Europe until a later period than that of our constitution.

426. The Right of Personal Security (to be secure from injury in body or character) is guaranteed by a number of amendments or parts of amendments. The IInd amendment secures to the people the right to keep and bear arms, the reason assigned in the constitution itself being that a well regulated militia is necessary to the security of a free state. By the IVth amendment provision is made also for security against the unwarrantable seizure of persons as well as of property. It is required that persons shall be

seized only upon warrants issued upon probable cause and supported by oath or affirmation, and the person to be seized must be particularly described. Especial pains are taken to secure to persons accused of crime every opportunity for their vindication and defense. All of the Vth amendment except the last clause, all of the VIth amendment, and all of the VIIIth are devoted to the provision of such guarantees. Unless the person accused is a member of the army or of the navy or of the militia in actual service, he can be held to answer for a capital or otherwise infamous crime only on the indictment or presentment of a grand jury.[1] If the penalty endangers life or limb, he cannot be tried twice for the same offense. He cannot be compelled to be a witness against himself, and he cannot be deprived of life, liberty, or property without due process of law. By the VIth amendment it is provided that the accused shall be given a speedy public trial by an impartial jury of the district in which the crime was committed; he must be informed as to the nature and cause of the accusation; he must be confronted with the witnesses against him; he must be permitted to compel, if necessary, the

[1] A grand jury consists in most of the states of from 12 to 23 men, chosen by lot in every district to inquire into all the offenses committed in the district since the meeting of the last grand jury. Usually cases are brought before it by a public prosecutor, who formally charges certain persons with particular crimes. If the grand jury thinks the evidence against an accused person sufficient to warrant a trial, it returns an indictment (a written accusation presented by a grand jury under oath, and upon the suggestion of the public prosecutor, to a court having jurisdiction of the offense charged therein) or a presentment (a written accusation presented by a grand jury upon its own motion, from its own knowledge or upon evidence laid before it). When an indictment has been found, the accused is given a copy of it and allowed time to prepare his defense. If he is unable to pay for counsel, the judge must appoint one, whose services are paid for out of the public treasury.

attendance of favorable witnesses; he must be permitted to secure or must be given the assistance of counsel for his defence. Finally, by the VIIIth amendment the requirement of excessive bail, the imposition of excessive fines, and the infliction of cruel and unusual punishments are forbidden.

427. The Right of Private Property is likewise guaranteed by several of these amendments or by parts of them. One of the annoyances to which the colonists had been subjected by the British government was the "billeting" of soldiers upon them. It was probably this experience that suggested the IIIrd amendment, by which it was provided that no soldier should be quartered in any house in time of peace without the owner's consent; nor in time of war, except in a manner prescribed by law. The IVth amendment also, which, as we have already seen, provides against the unwarrantable seizure of persons, makes provision likewise against unreasonable searches or seizures of property, by requiring that searches be undertaken only on warrants issued upon an oath attesting a cause and describing the place to be searched and the things to be seized; while the last clause of the Vth amendment provides that no private property shall be taken for public use without just compensation. Finally, by the VIIth amendment it is provided that in civil suits, where the value in controversy exceeds $20, the right to trial by jury shall be preserved; and any reëxamination of a case thus tried must be conducted according to the rules of the common law.

428. General Guarantees. It would seem as if the above provisions, together with similar ones contained in the constitution as originally adopted, must furnish ample security

for the rights of the individual; but in order to deprive the federal government still more completely of any possible opportunity to encroach upon them, there was added the IXth amendment, declaring that "The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people;" and the Xth, already considered elsewhere (§ 418), by which all powers not delegated to the United States nor prohibited to the states, are reserved to the states or to the people.

Library References. Macy, pp. 30–31; Dawes, chaps. xi–xii; Curtis, Vol. I, chaps. xxxiv–xxxv; Vol. II, chap. vi; Fiske, pp. 269–270; Hinsdale, chap. xlvii; Montgomery, pp. 221–222; Lalor, Article on *Bill of Rights*; Woodburn, pp. 84–85.

QUESTIONS ON THE TEXT

1. Define a bill of rights.
2. What provision is there in the constitution regarding freedom of speech and of the press? Discuss briefly the reasons for this provision. Is it likely to be abused? How?
3. State the substance of that provision of the constitution which insures religious freedom.
4. Give in substance that provision of the constitution that secures (1) personal liberty; (2) protection to private property.
5. What rights are secured by the constitution to persons accused of crime?
6. What provision is made for trial by jury in civil cases?
7. What does the constitution provide with reference to search warrants? Explain the importance of this provision.

CHAPTER XXVII

MISCELLANEOUS PROVISIONS

429. The Public Debt. We have still to consider a few miscellaneous provisions of the constitution not studied in the preceding chapters. Of these, two concern themselves with the national debt, one forming part of the constitution as originally adopted, the other forming part of the XIVth amendment. By the first it was provided that all debts contracted before the adoption of the constitution should be as valid against the United States under the constitution as under the confederation. In this provision the framers of the constitution were merely declaring their adherence to the generally accepted principle of public law that a nation does not invalidate its debts or other contracts by changing the form of its government; but the measure doubtless tended in no small degree to inspire confidence in the new government. The other provision of the constitution dealing with the public debt grew out of the civil war. It constitutes the fourth section of the XIVth amendment and provides that "The validity of the public debt of the United States . . . including debts incurred for payment . . . for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void."

In other words, the United States assures the validity of all debts incurred in the suppression of the rebellion, but refuses itself to pay and requires the states to refuse to pay any incurred in support of the insurrection.

430. Ratification. The VIIth and last article of the constitution proper provided for its ratification. Conventions were to be called in the various states for the purpose of ratifying the instrument, and the acceptance of nine states was to be sufficient for its establishment between those states. We have already seen something of the difficulties in the way of ratification and of its ultimate accomplishment (§§ 217–218).

431. Amendment. One of the conditions indispensable to the permanency of a constitution is a provision for its own amendment. States grow and change; and unless their constitutions, particularly if they are embodied in written documents, provide some means by which they can be made to conform in an orderly way to the altered conditions, the only recourse is to revolution, peaceful or otherwise. One of the chief defects of the articles of confederation, it will be remembered, was the practical impossibility of amending them. Profiting from their experience with them, the delegates to the constitutional convention attempted to provide a method of amendment which should be thoroughly practicable, and should yet be difficult enough to prevent hasty and ill-considered changes.

432. Possible Methods. As finally provided by article V of the constitution, amendments may be both proposed and ratified by two methods. They may be proposed either (1) by a two-thirds vote of both houses of congress, or (2) by a convention summoned by congress at the request of the

legislatures of two-thirds of the states. They may be ratified either (1) by three-fourths of the states through their state legislatures, or (2) by three-fourths of the states through conventions specially called for the purpose. It is left with congress to propose the method of ratification to be followed. Some restrictions were laid upon this power of amendment, however. The clauses in regard to the importation of slaves and the laying of direct taxes were not to be affected by amendment; and it was further provided that no state should be deprived of its equal suffrage in the senate without its own consent.

433. Method Used. Up to the present time all amendments to the constitution have been proposed and ratified by the first of the two methods described above, *i.e.*, congress has framed and proposed the amendments and the state legislatures have ratified them. No special conventions have ever been summoned for either purpose. The consent of the president to a constitutional amendment has been held by the supreme court to be unnecessary on the ground that "an amendment . . . is an act in constitution-making and does not come within the provisions of the constitution investing the president with a negative." [1]

434. Existing Amendments. The number of proposed amendments that have been brought before congress for its consideration is very large, but only nineteen have ever received the necessary two-thirds vote and been submitted to the states. Of these, fifteen only have been ratified and become part of the constitution. These fifteen may be divided into three groups. In the first of these groups we find the first ten amendments, the bill of rights, whose origin and

[1] Woodburn, p. 154.

purpose have been already discussed (Chap. XXVI). They are hardly to be considered as true amendments to the constitution. They "ought to be regarded as a supplement or postscript to it, rather than as changing it." In the second group we find the XIth and XIIth amendments, which, though they deal with quite different subjects, may really be classed together, since both are attempts to correct minor defects that have become apparent in the actual working of the constitution. These two amendments have also been discussed in connection with the matters with which they deal (§§ 338, 389). To the third group belong the last three amendments (XIII, XIV, and XV), which grew out of the civil war and which register in the written constitution the political results achieved by that struggle.

435. XIIIth Amendment. These three amendments we have not before considered. It should be noted in regard to them that they were ratified under very unusual circumstances and cannot be regarded as the free expression of the then existing desires of three-fourths of the states. By the XIIIth amendment slavery, except as a punishment for crime, is abolished in the United States and in all places subject to their jurisdiction. By the emancipation proclamation freedom had been granted to all slaves in the states then in rebellion, but that did not include all the slave-holding states, and in certain places slavery could still claim a legal right to existence. The ratification of the necessary number of states was obtained in 1865, and in December the amendment was declared a part of the constitution.

436. The XIVth Amendment was a part of the plan of reconstruction entered upon at the close of the war. It was proposed by congress in 1866 and declared in force

two years later. It defines citizenship by declaring that it is possessed by all persons born or naturalized in the United States and subject to the jurisdiction thereof, thus making the freed slave a citizen. It forbids the states to make any laws abridging the privileges of citizens, depriving any person of life, liberty or property without due process of law, or denying to any person the equal protection of the laws — provisions likewise intended primarily to secure federal protection for the freedman. By section 2 of the amendment an attempt was made also to secure political rights for the negro, by providing that any state denying to male citizens twenty-one years old the right to vote should have its representation in congress cut down in proportion to the number of citizens thus debarred from voting. This provision has never been made effective. The amendment also imposed some political disabilities upon certain classes of participants in the war. All state or United States officers who had taken part in the rebellion were rendered incapable of further office-holding until such disability should be removed by congress. An act of 1898 finally removed the last disability imposed by this section.

437. By the XVth Amendment, proposed by congress in 1869 and declared in force a year later, a direct attempt was made to secure full political rights for the negro. It had become clear that the indirect plan embodied in the second section of the XIVth amendment was destined to remain ineffective for a long time, if not forever. The XVth amendment provided that the right of citizens to vote should not be abridged on account of race, color, or previous condition of servitude. The wisdom of the policy that dictated the amendment has been much discussed. Like the second

section of the XIVth amendment, it has proved ineffective; for wherever the political consequences of the negro vote have been unpleasing to the white citizens, the states have found means of suppressing it.

Library References. Dawes, pp. 413–417; Hinsdale, chaps. xliii, xlvi, xlviii; Fiske, pp. 269–270; Wilson, §§ 1045–1046; Bryce, Vol. I, chaps. xxxii; Curtis, Vol. I, chap. xxxii; Vol. II, chaps. xi–xii; Lalor, Article on *Constitution;* Woodburn, pp. 154, 338, 356.

QUESTIONS ON THE TEXT

1. In what two ways may amendments to the constitution be proposed? State one mode of ratification of an amendment.

2. How long after its adoption before any amendments were made to the constitution? Give the substance of any of these amendments.

3. How many amendments have been made to the constitution? Explain the purpose of the last three amendments.

4. What amendments are included in the "bill of rights"?

5. What are the principal provisions of the amendments of the constitution which have been adopted since the close of the civil war?

CHAPTER XXVIII

THE UNWRITTEN CONSTITUTION

438. Development of the Unwritten Constitution. In the foregoing description of our national government reference has more than once been made to the existence of well-established political institutions and usages for which our written constitution makes no provision, but which have nevertheless become as fixed a part of the governmental machinery as have any of the institutions provided for by the written instrument. Such institutions and usages exist by the law of the unwritten constitution. By a study of Chapter XXX it will be seen that constitutional government may exist under an unwritten constitution — a constitution consisting of a mass of well-established precedents, usages, and statutes — as under a written one, in which such fundamental laws find expression in a single written document. Not only is this true, but it should be noted also that wherever a written constitution remains long in use without undergoing more or less extensive revision, it does so by virtue of the fact that there grows up beside it or within it an unwritten constitution, changing and expanding with the needs of the nation living under it. This unwritten constitution has been called the flesh and blood of the constitution rather than its skeleton. Such a growth has taken place in the United States. Our real constitution to-day consists not only of the document so carefully elaborated by the convention of 1789, but of numerous judicial

decisions, legislative acts, and political customs, which have originated in attempts to interpret or supplement it. Thus, while our constitution has undergone very little change by way of amendment or revision of the written document, it has, by means of its unwritten portion, readily adapted itself to the ever changing needs of a rapidly expanding people.

439. Original and Inherent Powers. One of the most important changes brought about by the growth of our unwritten constitution is the enlargement of the powers of the national government. It has been frequently averred that our national government is one of strictly enumerated powers; that it can do only those things which it has been given the right to do by an express grant of power, or at most by implication. This is unquestionably what the makers of the written constitution intended. As a matter of fact, however, the national government does exercise other powers than those expressly delegated to it or implied in the exercise of its delegated powers. In other words, the national government exercises not only *delegated* and *implied* powers, but *original* and *inherent* powers as well; and the exercise of such powers has been held by the courts to be constitutional. In making the Louisiana purchase, and in passing the legal tender acts of the civil war, the national government was exercising powers neither delegated to it by the constitution nor clearly implied in such grants of power as it had received. A more recent example of the exercise of original powers by the national government is to be seen in the acquisition of territory as a result of the Spanish-American war and in the establishment of governments for the acquired territory.

440. Presidential Electors only Party Agents. Other instances of practices and precedents that have all the force of constitutional provisions have been noticed in the preceding pages, but may be briefly recalled here. In our discussion of the electoral college the fact was noted (§ 341) that presidential electors are required by party custom to vote in the electoral college for the candidates selected by their party at the nominating convention and at the polls. This custom, though it does not transgress the letter of the written constitution, nevertheless defeats the purposes of the framers in creating the electoral college. It was intended that this body should be made up of men versed in public affairs and acquainted with the merits of public men, and that it should exercise a wise discretion in its choice of the chief executive. In the first two presidential elections this ideal was more or less fully attained, though even in the second election party influence began to make itself felt in the selection of the vice-president. There was a somewhat general expectation at least that for vice-president the federalists would vote for John Adams and the antifederalists for George Clinton. By the time of the third presidential election party organization was sufficiently developed and party influence sufficiently strong to control the votes of most of the electors; and by the time of the fourth it had become so clearly understood that the elector's duty was merely to ratify his party's choice, that the struggle centred about the formally nominated candidates for president and vice-president rather than about the electors. Gradually the elector lost every vestige of the discretionary power with which the framers of the constitution had intended to endow him and became the merest party agent.

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It is conceivable that an elector might be found rash enough to exercise his undoubted legal right to vote contrary to the wishes of those who elected him, and no legal penalty could be inflicted upon him; but such a course would mean for him political suicide. He would be looked upon as having betrayed a public trust and as deserving of the severest condemnation. No provision of the written constitution is more strongly safeguarded by the support of public sentiment than is this unwritten law requiring the elector merely to register the vote of his party.

441. Reëligibility of the President. Another unwritten rule that has come to have in practice the force of constitutional law is the rule limiting the reëligibility of the president. The written constitution sets no limit. The existing rule that the president shall be reëlected but once had its origin in the example of Washington. At the close of his second term he expressed his intention of declining reëlection on the ground that the unlimited reëligibility of the president was not in keeping with republican institutions. He deemed it advisable to set the limit at two terms. Jefferson, who might also have been elected for a third term, followed the example of his predecessor; and public opinion set the seal of its approval upon the custom so strongly that few serious attempts have been made to elect a president for a third term. An attempt in the republican convention of 1880 to renominate Grant for a third term failed in spite of his popularity with his own party, and the decision there rendered has up to the present time been accepted as final. To be sure, the election of a president for a third term is quite within the bounds of possibility, and, if it should occur, would have to be regarded as a

repeal of the unwritten rule against it; but so long as the rule commands the support of public opinion it must be regarded as a part of the unwritten constitution.

442. Custom and the President's Power of Removal. It is by a rule of the unwritten constitution also that the president possesses the power to remove, without the consent of the senate, officers appointed by him with the advice and consent of that body. The written constitution does not provide for the removal of officers except by the process of impeachment.[1] It is obviously necessary that there shall reside somewhere the power to remove incompetent or unfit officials whose offences fall short of actual violations of law. A debate upon the question as to where such power should be lodged arose in the first congress in connection with a bill for organizing the first departments. It was held by some members that the consent of the senate was necessary for removal as well as for appointment; by others that the power of removal should belong to the president alone. Congress adopted the latter view, and it was not until President Jackson's abuse of the power revealed its possible danger that the wisdom of this construction of the constitution was seriously questioned. Even then no legislative action was taken, and it was only when the conflict with President Johnson arose that congress made any attempt to interfere with the president's power of removal. By the tenure of office act passed in 1867 the consent of the senate to the removal of presidential appointees was made necessary, and thus the construction of the constitution adopted by the first congress was set aside. But it was not

[1] Art. I, Sec. 5 of the constitution provides that either house may expel a member by a two-thirds vote.

for long. Just a month after the inauguration of the next president came the repeal of all those provisions of the act that interfered with the president's power of removal, and in 1886 what was left of the act was repealed. "It is now generally held by publicists of both parties that the Tenure of Office Act was unconstitutional and would have been so held by the courts if it could have been tested." [1] Since its repeal there has been practically no question that the power to remove appointees without the consent of the senate is one of the president's constitutional prerogatives.

443. The Senate and the President's Nominations. Closely allied with this unwritten rule in regard to the president's power of removal is another touching the matter of appointments. In accordance with this rule the senate invariably confirms the president's nominations for cabinet officers. The control of other presidential appointments has passed very largely into the hands of the senate. It confirms or rejects them on any ground it chooses — for party reasons or for even less commendable ones. Not so with the cabinet; the president is allowed a free hand in the choice of his immediate assistants, and the senate confirms his nominations without question. It is, of course, conceivable that the president might make a nomination so obviously unfit that the senate would reject it; but such a nomination is very improbable.

444. The Cabinet and the Unwritten Constitution. This custom of unquestioning confirmation by the senate of cabinet nominations finds its justification in the character and function of the cabinet itself. The nature of this body as it exists to-day and its relation to the president and to con-

[1] Woodburn, p. 189, text and note.

gress are matters governed entirely by the law of the unwritten constitution. Its function and its relation to other branches of the government have been already discussed (§§ 357–358); but it should be noted that in the cabinet we have a political institution of very great importance which is not only regulated by the law of the unwritten constitution, but is indeed a creation of it.

445. The Committee System. Another important political arrangement which has become a part of our constitution, though the makers of our written constitution did not foresee it or provide for it, is the committee system by which congress accomplishes its work. The system grew up as the easiest and most natural method of solving the problems confronting the first congress. Congress, unlike the British parliament, had no official leaders charged with the duty of preparing measures and presenting them for its consideration. That duty belonged to the whole body, which soon found that the most effective method of accomplishing its work was by dividing it among the members. At first measures were usually debated in committee of the whole, and then there was delegated to a special committee the task of preparing a bill in accordance with the conclusions reached in the debate. As time went on permanent committees were appointed to deal with certain regularly recurring lines of business, and thus was gradually developed the extensive and complex committee system of the present, whose working we have already studied (§§ 310–312).

446. Finally, our whole System of Party Government, so important a part of our real constitution, has developed under the guidance of unwritten law. Our written constitution nowhere contemplates such a system, and its growth

has wrought profound changes in the character of our government. The president, who was intended to stand outside of and above all parties, has become avowedly a party leader. The speaker of the house of representatives, whom the constitution barely mentions and who was intended to act merely as a presiding officer, has come to wield tremendous influence over the course of legislation. The development of the party caucus, of the party convention, of our whole elaborate party organization and machinery, though not in contravention of the letter of the written constitution, is nevertheless contrary to the wishes and expectations of the framers of that instrument. All these established institutions, usages, understandings, form parts of our unwritten constitution. If the student is to arrive at any adequate conception of the true nature of our government he must not lose sight of the existence of this ever changing unwritten constitution side by side with the written instrument under which it has grown up.

Library References. Bryce, Vol. I, chap. xxxiv; Woodburn, pp. 86–93; Hildreth, Vol. IV, pp. 105 ff.; Curtis, Vol. II, chap. iii; Tiedeman, *Unwritten Constitution of the United States;* see also Library References for Chapter VII.

QUESTIONS ON THE TEXT

1. State one objection to an unwritten constitution as a basis of national government.

2. Is it the written or the unwritten constitution which determines the following: (1) no state has a right of its own motion to secede from the union; (2) presidential electors are expected to vote for their party nominee? Give reasons for your answer.

3. What determines that a member of the federal house of representatives shall reside in the district from which he is chosen? Give reasons for and against this practice.

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4. How is the real business of the federal senate and house of representatives conducted? Explain the system. How did it come to be established?

5. The members of the various committees in the federal senate are elective. What is the practice in the house of representatives? Explain.

6. How may a party caucus in congress determine legislation? Are the members of the party bound by the action of the caucus? Is this phase of our government a matter of the written or unwritten constitution? Explain.

7. Under our written constitution has the federal government the right in matters essentially national to exercise such original and inherent powers as belong to a sovereign state? Explain.

8. What is meant by "senatorial courtesy"? How far is it applied in the matter of presidential appointments? Explain.

9. By whom are the presidential appointees removable? Is this matter determined by constitutional provisions? Explain.

10. How was the cabinet created? What regulates its action and its relation to the president and to congress? Discuss fully.

11. What penalty is inflicted for violations of the provisions of the unwritten constitution? What would happen, for instance, if a presidential elector should vote contrary to the wishes of his party, or a member of congress to the decision of his party caucus?

CHAPTER XXIX

STATE GOVERNMENTS

447. In our study of the federal constitution we have already considered the relation of the states to the national government (Chapter XXV). We must now attempt to outline in a general way the government of the states themselves.

448. National Expansion since 1789 has been very rapid. At that date there were thirteen states with an area of 392,520 square miles,[1] whose population by the census of 1910 is 37,310,849. Three new states have been made from parts of these, and thirty-two others have been added with an area of 2,632,360 and a population of 54,661,417. "Westward," indeed, "the course of empire takes its way," and the power which New England and her sister states once exercised in politics is now shared with, if not entirely transferred to, the great states of the Mississippi valley and of the far west.

449. Diversities and Uniformities among the States. When we consider how dissimilar are the elements that compose our population, how great the extent and how varied the character and climatic conditions of the territory over which that population is spread, and finally, how large a measure of political independence is left to the states by the federal constitution, we might expect a much wider diversity of political arrangements between the states than actually exists. Diversities there are, to be sure, but they are in matters of detail. In

[1] Including Maine, Vermont, West Virginia, and the District of Columbia, as parts of Massachusetts, New York, Virginia, and Maryland.

general outline the governments of these forty-eight great commonwealths are surprisingly alike. This similarity must be attributed in part to direct copying of portions of the constitutions of the older states by the newer ones; in part to the constant movement of population, which tends to prevent the growth of local peculiarities; in part to the influence of railways, newspapers, and telegraphs, which tends in the same direction; in part to the absence among the newer states of both natural and historical boundaries and of separate traditions. In all the states we shall find written constitutions, which provide systems of government alike in all essential particulars.

450. Origin of State Constitutions. The state constitutions are the direct descendants of the royal charters under which the early English settlements in America were made. From the beginning the English colonists in America were accustomed to the idea of a fundamental law, usually written, which created for them a frame of government, and which emanated from an authority superior to the ordinary law-making power in the colony. This superior authority resided at first in the British crown or in the crown and parliament; but when the colonies became independent commonwealths it passed over, not to the legislatures, but to the people of the newly created states. In the ten colonies that were either proprietary governments or royal provinces it was deemed necessary to frame new constitutions or to make considerable alterations in the old ones; but in the three charter colonies, namely, of Massachusetts, Rhode Island, and Connecticut, the colonial charters were made to serve as state constitutions with only such changes as were made necessary by the substitution of the authority of the people for that of the crown. We have already seen

how largely the federal constitution was influenced by the preëxisting state constitutions. As might be expected, it has in its turn influenced the constitutions of states admitted to the union since its adoption; but still more have they been influenced by the constitutions of the older states from which the settlers of the newer states have come. The original constitutions of the first thirteen states, as well as the constitutions of the newer states, have been not only frequently amended but even entirely remodelled, so that the constitutions now in force in the several states date from all periods of our history.

451. Methods of Constitution-Making. At first state constitutions were formed either by the legislatures or more commonly by special constitutional conventions. These conventions were rarely required to submit their work to the people for approval; they were empowered not only to draft but also to adopt the constitution. Up to 1810 only three out of the twenty-five constitutions adopted had been submitted to the voters for ratification. Gradually these methods have been superseded by another. In practically all the states, constitutions are now framed by specially elected conventions, whose work is then submitted to the voters for ratification or rejection.

452. The Present Process. In detail the present process of forming a state constitution is practically as follows: A resolution is passed, in some states by a two-thirds vote, in others by a majority vote of the members of the state legislature, calling for a constitutional convention. If, at the next election, the voters signify a desire for revision of the constitution, another resolution of the legislature prescribes the number of members for the convention, the election dis-

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tricts, and the mode of election. When the convention has met and finished its work the new draft is submitted to the people for ratification, though only one-third of the states require such popular sanction. Usually it is accepted or rejected as a whole, though extra clauses on certain subjects are occasionally voted upon separately. In some states constitutional revision is required at stated intervals.

453. Constitutional Amendments. If, instead of general revision, certain specific amendments to the constitution are desired, such amendments are first proposed by the state legislature. In a few of the states the proposal for amendment may be passed by a mere majority of the members of the legislature; others require a three-fifths vote, others a two-thirds vote, while still others require that the proposal be passed by two successive legislatures by votes varying in different states from a majority to three-fourths of the members elected. After the proposed amendments have been passed by the requisite majorities they are submitted to the people for ratification, and in this popular vote likewise special majorities are required by the different states. While the process of amendment may seem at first sight somewhat difficult, it has not been found so in practice. Constitutional changes in the states have been made frequently — too frequently, some critics believe. The fact that the more recent constitutions require the consent of only one legislature rather than of two successive ones to a proposed change, would seem to indicate a tendency to make the process a shorter and thus an easier one. When we come to consider the contents of state constitutions, we shall see that they deal in the most detailed manner with a great variety of matters, many of which are of such a character that laws

concerning them must be subject to somewhat frequent alteration: hence, constitutional revision is probably no more frequent than is necessary.

454. Contents of State Constitutions: Historical Changes. The earlier state constitutions were brief, usually containing little more than a bill of rights and a frame of government. As might be expected in the case of governments formed under revolutionary influences, the new governments consisted of a strong legislature, a comparatively weak executive, and a carefully organized and independent judiciary. As revolutionary influences died away there followed a second period in the history of constitution-making, lasting from about 1800 to the civil war. In the constitutions of this period the political tendency of the time toward democracy is clearly manifest. Over a large part of the country it becomes an established principle that constitutions shall be enacted by popular vote. The suffrage is widely extended until it becomes practically manhood suffrage, except, of course, in the case of the negro. The legislature begins to be regarded as a mere body of agents to whom are intrusted no very large discretionary powers, and who must apply to the sovereign people for any extension of their powers. Very significant is the increasing length of the constitutions of this period, due to the incorporation of a mass of provisions differing from ordinary statutes only in having been enacted directly by the people instead of the legislatures. The constitutions enacted since the civil war have shown a slight reaction against the democratic tendencies of the earlier period. There has been a disposition to strengthen the executive and judicial departments of the government, and to curtail the power of the legislature both by laying restric-

tions upon it and by resorting frequently to direct legislation by the people.

455. Existing State Constitutions usually contain a definition of the boundaries of the state, a bill of rights, and provisions for the establishment of the three departments of government with their officers and functions together with regulations concerning the suffrage. In addition to these more essentially constitutional provisions, there occur a great number of miscellaneous provisions dealing with matters which properly belong to the domain of ordinary law; *e.g.*, articles concerning taxation, education, local government, corporations, public lands, the administration of the state debt, the management of public institutions, the sale of intoxicants, and many others. These later constitutions, moreover, not only cover this great variety of subjects, but they deal both with these and with the properly constitutional provisions, in much greater detail than was attempted in the earlier ones. Doubtless the principal motive in thus crowding into the constitutions much that might better take the form of laws on the statute books is popular distrust of the legislatures and consequent desire to legislate directly upon certain important subjects.

456. The State Governments. In every state the government is divided into the three departments — legislative, executive, and judicial. The state legislatures are all bicameral, the smaller house being termed in all states the senate, the larger usually the house of representatives, though in six states it is known as the assembly, in three as the house of delegates. The state executive consists of the governor and a number of other officials. The state judiciary consists of at least one state court with a number of minor courts.[1]

[1] See p. 287.

457. Suffrage and Elections. Although in most states the suffrage approaches very nearly to universal manhood suffrage, still the qualifications are by no means uniform. Most of the states demand that the voter be of the male sex, twenty-one years of age, and a resident of the state for a definite time, and he must not be a criminal nor a pauper. Beyond this the qualifications vary widely. In the states of Arizona (1912), California (1911), Colorado (1893), Idaho (1896), Kansas (1912), Oregon (1912), Utah (1896), Washington (1910), and Wyoming (1869) women vote on equal terms with men, and in Illinois (1913) so far as not prevented by the state constitution. A majority of the states demand that the voter be a citizen; in others no such qualification exists, or a declaration of intention to become a citizen is sufficient. Mississippi, Massachusetts, New Hampshire, Connecticut, and Delaware impose an educational test, requiring ability to read or to read and write. In Idaho the suffrage is denied to polygamists. Some states require that the voter register his name and certain other facts before he can vote. The reason for the age requirement is obvious. The residence qualification, if carried to the length it is in New York state,[1] tends not only to prevent repeating (voting more than once) at the ballot box but to secure from the voter some familiarity with local conditions before he casts his vote for a local officer. Citizenship presupposes a certain interest in the affairs of a state which may, perhaps, not exist in the alien voter. In the more thickly settled districts, particularly in cities, registration has been a helpful means of combating the evil of repeating.

458. Voting. This is usually done on a single day between sunrise and sunset. For the election of United States officers a uniform day has been fixed by law, viz., the first Tuesday

[1] The state constitution demands residence in the state for one year, in the county for four months, and in the election district for thirty days.

after the first Monday in November. Polling places are provided in charge of officers prescribed by state law. The voting is by ballot or by voting machines. Most of the states have adopted the Australian system of balloting, or some modification of it, in order to secure secrecy. By this system the voter, having been given an official ballot printed by the state and containing in parallel columns the names of all the candidates to be voted for at that election, with the party emblem, a circle, and the name of the party at the top of each column, enters a closed booth or room, alone. If he wishes to vote for all the candidates of his party (*i.e.*, a "straight ticket"), he places a mark in the circle at the top of the column containing their names. If, on the other hand, he wishes to vote for one or more candidates from other parties than his own (*i.e.*, a "split ticket"), he places a cross opposite the name of each candidate for whom he wishes to vote. He then hands the ballot to the proper officer for deposit in the ballot box. If the officer in charge of an election, or even a bystander, thinks that the voter does not possess the necessary qualifications, he may question his right to vote. This is called "challenging." The person challenged must then "swear in his vote," *i.e.*, take an oath that he is entitled to vote at that election. In New York illegal voting is punishable by a period of imprisonment from three months to a year in length, and for certain offences of this nature an additional penalty is provided depriving the convicted person of the right of suffrage for a period of five years after conviction. In New York also and in Florida betting on elections is forbidden by law.

459. Election. After the election the voting places are closed and the election officers count or canvass the votes.

If the number of ballots does not agree with the list made of the voters, then it is the custom to draw out of the box the number in excess. Sometimes, especially when voting for the officers of the larger divisions of the state, as the county, congressional district, or state, the votes are canvassed by two or three sets of officers. In most of the states a plurality only is necessary for an election. By plurality is meant the excess of the number of votes cast for the leading candidate over those cast for each of his competitors in cases where there are more than two candidates and no one receives a majority of the votes. Thus, if A gets 450, B 300, and C 250 votes, out of a total vote of 1,000, A is said to have a plurality over its competitors. In several of the New England states a majority — *i.e.*, at least one over half of the total number of votes cast — is necessary to elect. It very often happens that a person is elected on a plurality vote who is really the choice of but a small part of the voters; on the other hand, under the New England system it may be necessary to resort to a new election, no candidate having the necessary number of votes for a choice.

460. The Legislature: Organization. The members of both houses of the state legislature are chosen by popular vote, usually from districts equal in number to the members of the respective houses. The basis of representation, therefore, does not differ in the two houses except that the senators are elected from larger districts. Otherwise the houses differ merely in the number of members, the length of term and their special duties. The state senates now consist on the average of about thirty members. Nevada has the smallest senate, numbering fifteen members; Minnesota the largest — sixty-three. In most of the states the term of the senator

is longer than that of the representative, ranging from two years to four. In most of the states also the senate is only partially renewed at each election, so that this body possesses a continuity which the other house lacks. Some of the states also fix a higher age qualification for the senator, and until 1897 Delaware imposed a property qualification.

461. The Lower Houses are in general about three times as large as the senates, but the size of the houses varies greatly from state to state. In the west and south the houses are generally smaller than in the other states, particularly in New England, where the stronger local sentiment demands representation for smaller districts. The length of term varies from one year to four, most of the states electing for two. Except for a lower age qualification and a shorter period of residence for representatives, the qualifications for members of the two houses are essentially the same. The requirement that both senators and representatives shall be residents of the districts from which they are elected is made in some states by the constitution, and everywhere by custom.

462. Sessions. In most of the states the sessions of the legislature are biennial.[1] Only six states (Massachusetts, New York, New Jersey, Rhode Island, South Carolina, and Georgia) now hold annual sessions, among them, naturally, those which hold annual elections for members of the legislature. In most states also the length of the session is limited, usually to sixty days, but in three states (South Carolina, Wyoming, and Oregon) to forty. The governor may, however, convene the legislature in extra session, either on his own initiative or at the request of a certain proportion of the members.

[1] In some of the southern states the legislature regularly meets but once in four years. Alabama is an example of this custom.

463. Procedure. In organization and procedure the state legislature is very similar to the national. The lieutenant-governor, wherever provision is made for such an officer, is usually the presiding officer of the senate. The speaker, as the presiding officer of the house is called, is chosen by the members. In most of the states a majority of the members of each house constitutes a quorum. As in the national legislature, there are regulations securing to the members freedom of speech in the house and exemption from arrest during the session, providing for the expulsion of members by a two-thirds vote, for adjournment, for the keeping of journals, the judging of elections of members, the reading of bills, etc. The committee system is in use in all the states, and in most of them measures must be approved by at least one-half of all the members of both houses before they are submitted to the governor.

464. Restrictions on Powers of Legislatures. We have already seen (§§ 417–419) that under the federal constitution the states possess all those powers not delegated to the United States by the constitution nor prohibited by it to the states. The powers of the states are not, like those of the national government, delegated powers, nor do any of the state constitutions expressly delegate powers to their legislatures. Except where specific limitations have been imposed upon it, the state legislature has power to deal with any subject coming before it. The people of the states have, however, shown a growing jealousy of the powers of their legislatures by placing upon them various important limitations and prohibitions. Upon certain subjects, varying from state to state, the legislatures are forbidden to pass any measures at all. Mr. Bryce classifies these forbidden meas-

ures as follows: (1) statutes inconsistent with democratic principles, *e.g.*, granting titles of nobility or creating a property qualification for suffrage or office; (2) statutes against public policy, *e.g.*, tolerating lotteries, impairing the obligation of contracts, etc.; (3) statutes special or local in their application; (4) statutes increasing the state debt beyond a certain limited amount, or permitting a local authority to increase its debt beyond a prescribed amount. In addition to these prohibitions upon legislation, the constitutions impose also a number of restrictions as to the treatment of bills, the majorities necessary to pass certain bills, the method of voting, the reading of bills and the intervals between readings, as well as regulations against changing the purpose of a bill during its passage, and requiring that only one subject be included in a bill and that that subject be expressed in the title.

465. Special Powers of the Houses. In most of the states each house possesses special powers. The power of impeachment belongs to the lower house, but the senate acts as a court for the trial of impeachment cases. A two-thirds vote is usually required for conviction. The senate also possesses the power of confirming appointments made by the governor. On the other hand the power of originating money bills resides, in a majority of the states, with the lower house. In Vermont the power of proposing amendments to the constitution is given to the senate alone, in Connecticut to the house.

466. The Executive: Its Character. The organization of the executive power of the states differs very materially from that of the federal government. We have seen that the president is the real executive head of the nation. In him the chief executive authority is vested and to him are re-

sponsible the officials who administer the federal law. He appoints them and he may at any time remove them for cause. In other words, the executive authority of the nation is centralized. In the states, on the other hand, it is very much decentralized. The relations existing between the governor and the other principal administrative officers of the state are very different from those existing between the president and his cabinet. These state officials usually are not the governor's appointees. They are generally elected either directly by the people or by the legislatures and are in nowise responsible to the governor. Even where, as happens in a few of the states, some of these officials are appointed by the governor with the confirmation of the senate, they are still not dependent upon him. Their duties are prescribed either by the constitutions of their states or by statute, and they are removable only for just legal cause. They are not the governor's subordinates or agents; they are his colleagues. Moreover, it cannot even be said that the governor and the other central administrative officials together make up the whole of the state executive. The power is still further shared by a large number of local officials — county, town and municipal officers — who, though they execute state law, are so little responsible to the central executive authority that they are not usually regarded as state officers at all, but only as officers of their districts. Neither the governor, nor any one of his colleagues with the possible exception of the superintendent of education, exercises any real control over the local authorities by whom the laws are actually administered.

467. The Governor. In spite of this diffusion of executive power, however, the position of the state governor is

by no means insignificant. If he is, as he has been called, only a "piece" of the executive, still he is a very important piece. Though he has no real control of the other executive officers and administrative boards, still he has general oversight of them. He has some power of appointment, though not very extensive. As commander-in-chief of the state militia, it is his duty to see that order is preserved within the state and to repel invasion in case such occurs. The governor also has the power under certain restrictions to grant reprieves and pardons to persons convicted of crime. His most important duties, however, are those which have to do with the legislature, and which give him some control over legislation. At the beginning of each session he sends a message to the legislature for the purpose of informing the law-makers of the condition of the commonwealth and of recommending such measures as he deems necessary. In case the houses fail to agree on the time of adjournment he may adjourn them. In most states, also, he may call special sessions, either with or without the request of a portion of the legislature. Most important of all, however, is his power of vetoing measures that he does not approve, a power given him in every state except two (Rhode Island and North Carolina). Bills may, of course, be passed over the governor's veto by majorities varying widely in the several states. In many of the states the governor may veto particular items in appropriation bills; other bills must be approved or disapproved entire.

468. The Governor's Colleagues. In addition to the governor all the states have a number of other central executive officers, though not all the states have exactly the same ones. Many of them have lieutenant governors who succeed to

the governorship in case the governor is for any reason incapacitated. All of them have secretaries of state and all have treasurers. Nearly all have attorneys-general. Most of them have superintendents of education, though some have boards of education instead. Some have auditors; in others the same duties are performed by comptrollers. In three of the states (Maine, New Hampshire, and Massachusetts) there exist governor's councils. The secretaries of state keep and affix the seal of the commonwealth and keep all state records. The treasurers have charge of the public funds, which they pay out only on warrants issued by the auditors or comptrollers. The auditors or comptrollers have general supervision of state finances. Like the national secretary of the treasury they present to the legislatures estimates of the amount of money needed for state purposes, though the state legislatures in general feel themselves even less bound than does congress by such recommendations. The attorneys-general are the legal advisers of the states and conduct all state cases before the courts. The superintendent of education oversees the educational system of the state, often apportioning the school moneys and deciding disputes involving school authorities. In addition to these central executive officers there are in many of the states various departments in charge of superintendents or boards, *e.g.*, departments of health, of labor, of agriculture, of charities and correction. In most cases these departments have not yet been given sufficient power to render their control effective, and a large part of the duties which naturally belong to them are still under local control.

469. Election, Terms, and Qualifications of Executive Officers. Not only the governor but the other central executive

officers as well are chosen by direct popular vote over the whole state. The terms vary in the different states. In general the terms of the other principal officers are the same as that of the governor and lieutenant governor. In most of the states the term is either two or four years; occasionally, however, one or three. Most of the states prescribe certain minimum qualifications, covering age, residence, and citizenship, which always apply to the governor and lieutenant governor, and generally to the other most important officers. All these officials are removable by impeachment.

470. The Judiciary. Justice in the states is administered through a system of courts which exist quite independently of federal law. The two systems of courts, federal and state, are entirely separate, so that for cases falling within their jurisdiction the decision of the state courts is final. Only in cases involving federal law or in cases in which the nature of the parties to the suit is such that no state court has complete jurisdiction (*e.g.*, suits between citizens of different states) does an appeal lie to the federal courts.

471. The System of Courts. The judicial systems of the different states vary so considerably that only the most general description is applicable to all of them. Usually there are four grades of state courts. The lowest are those presided over by justices of the peace and having jurisdiction over petty civil and criminal cases. Their decisions are almost always subject to appeal to higher courts. Next above them stand the county or municipal courts, which hear appeals from them and have original jurisdiction in civil cases where the amount involved is large, and in criminal cases of the graver character. Next come the superior courts, called also circuit or district courts, which hear appeals from the

lower courts and have original jurisdiction of the most general character in both civil and criminal cases. The highest court in the state is usually the supreme court. In most of the states its jurisdiction is only appellate, though in a few of the older states it has original jurisdiction as well. In five of the states (New York, New Jersey, Louisiana, Kentucky, and Illinois) there are courts higher than the supreme court called courts of appeal.

472. Special Courts. In addition to these, some of the states provide special courts for the trial of cases in equity (cases arising out of grievances for which the common law furnishes no remedy). Usually, however, instead of providing special courts, the states have given jurisdiction over such cases to one or more of the regular courts. Much more general is the special probate court, whose business it is to see to the disposition of the property of deceased persons. In many states, however, this function is also performed by the ordinary courts.

473. Judges. The judges of most of the state courts, both higher and lower, are elected, those of the supreme court usually by the people of the state at large; those of circuit, county, municipal, and other courts, by the electors of the area in which they serve. In some states, however, the higher judges are chosen by the legislature; in a few others they are appointed by the governor with the advice and consent of the senate, and in three of the New England states they are appointed by the governor and council.

474. The Term of Office varies from two years to tenure during good behavior. In general the higher judges hold office for longer terms than do the lower ones. Justices of the peace are usually elected for two or four years, circuit

judges for four or six years, supreme judges for eight or ten. Most of the states impose an age and residence qualification upon candidates for judgeships, and some require tests of legal fitness also.

475. State Finances. The state government like the national government cannot exist without money. The power to tax the people of the state is therefore vested in every state legislature. "Although the budget of the state is not large in proportion to the wealth of its inhabitants," a considerable revenue is required, not only to pay the officers and the militia, but to sustain the various enterprises in which the state is interested, such as asylums and institutions for the unfortunate, schools, canals, and the like. If the state is in debt, some of this revenue goes toward paying the interest on its bonds.

476. Taxes. State taxes usually take the form of direct taxes on real estate and personal property, or in some cases on collateral inheritances. A few states impose a poll tax, which is often a prerequisite for voting. Almost every state in addition imposes certain indirect taxes. Such are the taxes on particular trades or occupations, which sometimes take the form of license taxes; or the taxes on franchises, *i.e.*, the right to operate railroads, etc.; or again taxes on railroad stock.

477. Exemptions. Certain properties are exempt from taxation. Among these are public buildings, since they are used for public purposes, and it is for such purposes that taxation is levied; institutions or societies for the improvement of the people, such as schools, churches, charitable institutions and agricultural societies; the necessary implements of the farmer or mechanic; and United States securities. In some states, possibly with the idea of encouraging

thrift and industry, the law exempts deposits in savings-banks from taxation.

478. Assessment. The first step toward raising revenue by direct taxation is assessment. Certain local officers, known as appraisers or assessors, chosen by the local governments but acting under state laws, ascertain the value of the real estate and personal property of the various localities. As the contribution of the communities is based on this valuation, it is to their interest to put it as low as possible, and thus to avoid their share of the state burdens. To correct abuses of this sort, many states have a state board of equalization for the purpose of having the taxable property of the localities equally and fairly valued. Their work is sometimes supplemented by similar county boards. Many states have also taken the assessment of certain sorts of widely diffused property, *e.g.*, railways, telegraph and telephone lines, out of the hands of the local assessors and have established boards of state assessors to deal with them.

479. Apportionment and Collection. When the state has determined the amount to be raised, it is apportioned throughout the state according to the amount of taxable property as determined by the returns received from the assessors. The amount to be raised is divided by the amount of taxable property, and the per cent obtained constitutes the state tax rate. With the valuation of the county property before them it is easy for the county officials to ascertain in a similar manner the county rate, and the town officers the town rate. State, county, and town taxes are usually paid in one sum. When the collector receives the taxes the town officers retain the part raised for town purposes and send the remainder to the proper county officers, who similarly retain

the county taxes and remit the rest to the state authorities. Indirect taxes are usually paid directly to state officials.

480. Restrictions upon Taxing Power. Various restrictions have been imposed upon the states by their constitutions in this matter of raising and spending money. "Taught by sad experience of reckless legislatures," the people limit the amount that may be raised annually by taxation. Sometimes this limitation takes the form of a requirement that the sum raised shall be no more than sufficient to meet current needs. In their fear of state indebtedness they have limited the amount that may be borrowed, sometimes to an absolute sum, sometimes to a certain percentage of the assessed valuation of the taxable property. They have besides forbidden the state to contract debts without immediately providing a sinking-fund to discharge the obligation. Similar restrictions also exist to prevent indiscriminate borrowing on the part of the local governments under state jurisdiction.

481. Education. One of the most important functions entrusted to the state governments, is the maintenance and control of the public school system. In this work of educating the masses, a work so important under a republican form of government, the national government by extensive land grants has aided the states most liberally; but it has left the control of the public schools, both elementary and higher, to the states.

482. The School System. The earliest public schools were organized not by the states but by the localities that desired them, and they formed no part of any system. Gradually, however, as the need for better organization, better instruction, and greater uniformity became apparent, the states be-

gan to regulate public education by law. At first there were no state school officials, and the attempt at state control was to a great extent ineffective. Now, however, the schools are everywhere completely regulated by state law, though the law is still administered for the most part by local officers. In each state the law determines, among other things, what shall be the administrative unit for the school system — county, town, or district; prescribes a minimum list of subjects to be taught; fixes a minimum school year; and lays down the requirements which must be met by the teachers of the state.

483. Various Grades of Schools are maintained by all the states. The common schools, sometimes called district schools, and graded schools, furnish facilities to everyone desiring an elementary education. High schools and academies give instruction in the academic branches and prepare for college; while a higher education is to be obtained in colleges and universities, many of which are supported wholly or in part by state funds. Most of the states of the west maintain at least one state university, where tuition is free to its citizens. They have also established technical and agricultural schools and colleges for the purpose of increasing the industrial efficiency of their citizens. The states also endeavor to secure the best instruction possible by creating normal schools for the training of teachers and by fixing tests for candidates for positions as teachers.

484. State Administration of Schools. In nearly every state in the union the educational system is under the general supervision of a state board of education or a state superintendent, or both. These officials are chosen in various ways in the different states, though the boards are perhaps

more frequently appointed by the governor or legislature, the superintendents more often elected by the people. It is the business of these officials to interpret and enforce the school laws; to care for the state school funds; to attend to the examination of teachers, except where that duty has been intrusted to county boards; and in some cases to select the text-books. It is their duty also to study educational methods and to keep themselves generally informed in educational matters with a view to improving as rapidly as possible the schools of their state.

485. Local Administration of Schools. Below these state officials there are usually county boards of education and county commissioners or superintendents. The examination of teachers is usually conducted by these boards under state law. The county commissioners or superintendents are charged with the duty of visiting and inspecting the schools and distributing the school funds among them. In the rural sections school law is administered by officers usually called trustees chosen for a term of three years by the people of either the school district or the township. Cities have, under state laws of course, their own separate school systems, administered by their own boards of education and city superintendents.

486. Compulsory Education. Many states regard an elementary education as a matter so important and so closely connected with the stability of republican institutions that they have enacted laws compelling the attendance of all children between certain ages for a certain length of time each year.

487. Importance of State Government. As indicated above the federal government left to the states all those powers not

delegated by them to the nation nor forbidden by the constitution to the states. How vital, then, are the issues at stake in our state elections! President Garfield said: "The state government touches the citizen and his interests twenty times where the national government touches him once. For the peace of our streets and the health of our cities; for the administration of justice in nearly all that relates to the security of person and property, and the punishment of crime; for the education of our children, and the care of unfortunate and dependent citizens; for the collection and assessment of much the larger portion of our direct taxes, and for the proper expenditure of the same — for all this, and much more, we depend upon the honesty and wisdom of our General Assembly (of Ohio) and not upon the Congress at Washington." When it is remembered further that all the important reforms that have agitated the people of England during the last century, with the possible exception of the corn laws and the abolition of slavery, would have been proper objects for our state rather than our national government, the relative importance of good management in state affairs becomes apparent.

Library References. Macy, chaps. viii–xi, xiii; Macy, *First Lessons*, chaps. iii–xv, xxiv, xxviii; Dawes, chaps. xiii–xiv; Fiske, pp. 173–188; Hinsdale, chaps. xlix–liv; Bryce, Vol. I, chaps. xxxvi–xlv; Wilson, §§ 885–994; Dole, chaps. xv–xvii, xix; Lalor, Article on *Constitutional and Legal Diversities in States;* Woodburn, chap. vii.

QUESTIONS ON THE TEXT

1. In some states women, aliens, infamous criminals, idiots, minors, and lunatics are excluded from voting. Give reasons for or against the exclusion in each case.

2. Should paupers be allowed to vote? Give reasons.

3. Give a reason for the law requiring registration of voters. Why is such a law more important in a city than in a small village?

4. Give one reason why a legislature should consist of two bodies.

5. Give arguments for or against biennial sessions of the state legislature.

6. What is the capital of a state, and why so called?

7. Describe the process of assessing property for the purpose of taxation, and show how the amount of money to be raised by each town is fixed.

8. Mention three kinds of property that are usually exempt from taxation, giving reasons. Why has the state the right to impose taxes?

9. What is meant in general by a compulsory education law? Why is such a law desirable?

10. May a state levy and collect an income tax?

11. What government touches the individual the more frequently — city, state, or national? Why?

12. Mention the different *state* courts. What is a police court?

13. Under what circumstances may cases be transferred from state to federal courts?

14. If legislation on any subject is desired by citizens of the state, how is the attention of the legislature secured?

INITIATIVE AND REFERENDUM

As a check upon state legislatures, resort is had to the *initiative* and *referendum*. By initiative is meant the right of the people to propose a law to the legislature, and by referendum is meant that before an act passed by the legislature becomes a law it shall first be submitted to the people and decided by popular vote. Amendments to the state constitution, and public improvements involving large expenditure of public funds, have generally been submitted to popular vote. The principle of the referendum has, in various ways, been recognized from the early beginnings of government in this country. The principle is further recognized in referring such questions as local option, municipal ownership, the incorporation of villages and cities, and similar questions to the people to decide at the polls. South Dakota, Oregon, and Oklahoma provide in their state constitutions or by statute for a system of direct legislation by this means. The tendency of modern times is in the direction of the initiative and the referendum, and toward direct primary nominations for all public offices. Illinois, Wisconsin, and Minnesota have primary election laws.

CHAPTER XXX

COMPARISON OF NATIONAL GOVERNMENTS

488. Other Governments: their Relation. After we have completed our study of the local, state, and national government there still remains for us to learn how other nations are governed and how we are affected by the relations of our government with other governments. This relation is regulated by *international law*. It consists of a body of usages, customs, maxims, and institutions of long standing defining the duties and responsibilities of nations in their relation under certain conditions, but which no nation is bound to observe and yet whose violation would be considered as very bad form and might lead to armed interference. When international law is violated by individuals in the United States, they may be punished by due process of municipal law. Treaties (agreements) made between nations are binding upon the nations mentioned in the treaties. To facilitate intercourse between nations recourse is had to diplomatic agents (representatives of one country residing in another). Matters of dispute may be settled by arbitration, embargo, reprisal, and retorsion before resort to war is made. When war is declared, notice of some kind indicating the change in feeling must be made in order that the subjects of the two nations involved and the subjects of neutrals may know that a state of war exists in order that they may observe the rules of inter-

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national law in all matters relating to the combatants. For a full discussion of international law, see *School Civics*, Chapter XXII.

489. England's Constitution. The government of Great Britain is a limited constitutional monarchy, that is, it has a constitution which defines the rights and privileges of the people and the crown. This constitution is largely unwritten, and what is written is not contained in a single document as is the constitution of the United States. The written part is scattered through acts of parliament and solemn agreements extending through the middle ages to the present time. The unwritten part consists of customs, maxims, usages, and institutions of long standing, which have come to have the force of written law. Thus the British constitution is an evolution which changes to meet changing conditions extending over many centuries.

490. England's Legislature. The legislative department of the British government is called parliament, and is composed of two houses, the house of commons and the house of lords. The members of the house of commons are chosen by universal male suffrage by secret ballot for a term of seven years. The members of the house of lords are chosen in four ways — heredity, by royal appointment, ecclesiastical, and elective. With the exception of the right of the house of commons to originate revenue and appropriation bills, the two houses have substantially equal powers in legislation. The English constitution places no legal limitations upon the power of parliament. Parliament is, therefore, England so far as its legal powers are concerned (see § 223). A quorum necessary to do business

is fixed at forty of the 670 members of the house of commons and three of the 570 members of the house of lords.

491. England's Executive. The executive power is, nominally at least, the crown. Besides executing the fundamental laws as expressed in the constitution, the laws passed by parliament, and the decision of the courts, the crown may do anything which it is not forbidden by parliament to do. Briefly summarized, the executive powers of the crown include the declaration of war, the negotiation of treaties, the appointment and reception of diplomatic officers, the issuing of passports. The command of the army and navy with large powers over the appointment and dismissal of officers, the promulgation of rules for the government, and disposition of the forces, the appointment of all civil officers of the government and the removal of most of them, the appointment of the clerical officers of the Church of England and the granting of pardons are entrusted to the crown. The legislative powers of the crown may be summarized by the authority to summon, open, or prorogue (that is dismiss) parliament upon the advice of the prime minister. Dissolution puts an end to the house of commons, but it does not affect the house of lords otherwise than ending the term of the Scottish peers who are elected for the term of parliament. To these legislative duties may be added the legal right of the crown to veto the measures of parliament, a right, however, which has not been exercised since 1707, and the adoption of the cabinet system makes further resort to it by the crown unnecessary.

492. English Cabinet. The actual administration of the British government is through the agency of the cabinet

selected from the members of parliament of the political party which has a majority in the house of commons. When a cabinet is to be formed, the crown sends for the acknowledged leader of the majority party in the house of commons and asks him to accept the premiership, and intrusts him with the selection of his colleagues. The premier selects his associates and recommends them to the crown, who appoints and commissions them. Those selected may be members of either house, but those who are members of the house of commons must resign their seats and secure the approval of their constituents by re-election. Thus the people of their districts are consulted in the formation of the cabinet. The members of the cabinet have seats in parliament and take active part in all legislative matters; they initiate public legislation and assume leadership in debate. If they are defeated on any important government measure or if the house votes lack of confidence in their leadership, they may resign and another ministry is formed by the new majority thus indicated. If, however, the defeated cabinet think they still represent the will of the people they can ask the crown to dissolve the house of commons and order a new election, thus bringing the question squarely before the individual voter whose chosen representatives take their seats immediately instead of a year from the next December after election, as in the case of congress (see § 251). If the result of the election is against the cabinet, they must resign. In addition to their legislative duties, the Ministers act as heads of the various administrative departments.

493. England's Judicial System. The judicial system of England consists of (*a*) the house of lords, which acts

as a criminal court for the trial of peers, as a general court of impeachment, and is the highest court of the kingdom; (*b*) the judicial committee of the privy council is a court of last resort for India, the Colonies, the Isle of Man, the Channel Isles, and the vice-admiralty courts abroad. Its personnel is substantially the same as that of the house when sitting as highest court of appeals; (*c*) the general courts of the kingdom are the high court of justice and the court of appeals. The former consists of three sections known as the chancery division of six judges, the King's bench division of fifteen judges, and the probate, divorce, and admiralty division of two judges. The principal criminal courts are the petty session and quarter sessions, assize courts, and the central criminal court. England's local government is one of great and varied complexity, incapable of brief explanation.

494. Germany. Germany is a constitutional monarchy with a written constitution which gives in detail the powers and relations of the different departments of government. It may be amended by the imperial legislature according to the usual processes of legislation. Provisions which guarantee specific rights of individual states cannot be changed by amendment. The constitution provides for a national parliament or imperial legislature of two houses, namely, the national diet (or *Reichstag*) of 387 members representing the entire empire, and the national council (or *Bundesrat*) of 58 members, representing the individual states. The German empire is not a union of equal states. Members of the reichstag are chosen by secret ballot by universal male suffrage for a term of five years on the basis of population. Members of the national council are

apportioned among the states by the constitution. They have the character of ambassadors and are entitled to the same privileges accorded diplomatic representatives of foreign states. Prussia has nineteen votes in the national council and three-fifths the membership of the reichstag. She, therefore, controls all questions of amendment to the constitution, the chairmanship of all committees, except one, in the national council, enjoys the constitutional right to the casting vote in case of tie, and a clear majority in the reichstag. The hereditary king of Prussia is emperor by right of succession, which right is set forth in Article IV of the constitution. The powers of the national legislature are enumerated in the constitution, and relate to the ratification of treaties, the regulation of foreign and interstate commerce, the money system, criminal law, private law, and judicial organization, and procedure throughout the empire; the regulation of citizenship, medical and veterinary practice, regulation of customs and excise, and the military and naval system, enactment of measures for the execution of the laws, settlements of constitutional conflicts within the state, and the regulation of many other details which in other states having a federal system of government are left to the regulation of the individual states. However, in the domain of interstate and foreign relations the individual states of the empire may conclude treaties among themselves for the regulation of their postal and telegraph system, and even with foreign countries in matters of local concern, and to that end may send and receive ambassadors. They may also exercise matters not regulated by imperial laws.

495. Germany's Executive. The executive power in Germany is vested in the emperor and, as such, he has the power to appoint and receive ambassadors and other public ministers and consuls, negotiate treaties, and wage war. He is commander-in-chief of the army and navy, makes known the laws, and supervises the same. In the supervision and execution of the laws he addresses himself through the chancellor to the state executives. All official acts of the emperor, excepting those relating to the command of the army are countersigned by the imperial chancellor who is appointed by the emperor. The endorsement of the chancellor relieves the emperor of all responsibility for acts which he himself recommends. The chancellor's responsibility, however, is not to the legislature but to the emperor. If, therefore, the reichstag refuses to pass his measures or votes a resolution of censure against him, he does not resign, but continues to hold his office and if he thinks the action of the reichstag is not the will of the people he may request the emperor to dissolve it, thus bringing the question at issue, squarely before the individual voter as in the case of the English ministry and parliament. Thus the emperor through his chancellor may keep in touch with the popular will.

496. Germany's Judicial System. No provision is made by the constitution for a judicial system other than that conferred on the federal council designated as a court for the settlement of public-law controversies between states and the constitutional conflicts within states when appealed to by one of the parties concerned. Otherwise matters of organization, jurisdiction, and procedure of the German courts is left to the regulation of the imperial legislature,

which has created a uniform system of courts for the empire. There are four grades of courts, the lowest being the *district court* for the trial of petty, civil, and criminal cases. This court is presided over by a single judge in the trial of civil cases, and has associated with him two laymen for the trial of criminal cases. Next above the district courts are the *territorial courts* divided into civil and criminal chambers with appellate jurisdiction from the lower courts and original jurisdiction over larger civil and graver criminal cases. The next highest courts are the *superior courts*, likewise divided into civil and criminal chambers, with appellate jurisdiction only. Standing at the top of the judicial system is the *imperial court*, which has its seat at Leipzig in Saxony. It is composed of four criminal and six civil senates with an aggregate membership of over ninety. These judges are appointed by the emperor with the consent of the federal council. Their tenure is for life, and they cannot be removed by any authority except by the court itself as a matter of discipline. It has appellate jurisdiction over civil cases brought to it from the superior and consular courts. The criminal jurisdiction of the imperial court extends in first and last instances to all cases of high treason against the emperor or the empire, and to appeal in certain cases from the territorial and jury courts. The position of the judiciary is one of absolute independence. The judges can neither be removed, transferred, nor retired against their will. With the exception of the judges of the imperial court, all judges are appointed and paid by the several states, and are regarded as state judges, although their positions are created and their qualifications prescribed by imperial law. Local govern-

ment in Germany may be said to consist of such supervisory service as may be necessary to insure the strict enforcement of imperial law by state authority.

497. French Government. The government of France may be characterized as a centralized parliamentary republic. It has a written constitution outlining in a general way the framework of government. The numerous limitations upon the government in regard to individual liberty so noticeable in the constitution of the United States is wholly lacking in the French constitution. The French constitution is, therefore, one of government rather than of liberty. It is short and concise, leaving to the ordinary processes of legislation nearly all matters of detail.

498. The French National Legislature. This body consists of two houses, the chamber of deputies and the senate. To the chamber of deputies belongs the exclusive power to originate revenue measures, otherwise the two chambers are substantially equal in matters of legislation. The members of the chamber of deputies are chosen by universal male suffrage by districts similarly as representatives of congress are chosen. Their term of service is fixed at four years. As to the composition and organization of the senate, the constitution makes no provision and but scant reference to its powers. France is divided into administrative departments, each department subdivided into districts containing approximately equal population. The number of districts within an administrative department constitutes an electoral college and these various electoral colleges choose the members of the senate. Senators are apportioned among the several departments according to population. The term of office for senators is fixed at nine

years. The constitution provides that the terms of one-third of the number of senators shall expire every three years. Like members of congress they enjoy certain immunities while in the discharge of their duties as legislators. Measures duly passed by both chambers are sent to the president for his approval, but he has neither an absolute nor a qualified veto. He may, however, demand a reconsideration of the measure, and if passed by a majority of both houses it becomes a law notwithstanding his objections.

499. The French Executive. The French chief executive is called a president, and is elected not by popular vote, but is chosen by majority vote of a body composed of the members of the two chambers of the legislature. The president's term is fixed at seven years, and he must not be a member of any family that has reigned in France. He is re-eligible. The president's executive powers include the negotiating of treaties, the appointment and reception of ambassadors and ministers, and the power to wage war. In addition to the legislative power above referred to the president may prorogue parliament and initiate legislative measures. He has almost unlimited power of appointment and supervision of administrative officers and extensive ordinance powers where the legislature has not made proper provision, and make disposition of the army and navy. He may also grant pardons, commute penalties, and issue reprieves. In exercising the above powers the president acts through his ministers who are collectively responsible to the legislature for the general policy of the administration and individually responsible for their own personal acts, thus relieving the president from all respon-

sibility, although they are discharging his orders, a relation similar to that existing between the emperor and chancellor in the German government. The ministers are appointed by the president and serve during his pleasure, in theory; in practice, however, they are appointed by the leader of the chamber of deputies. Like the members of the British cabinet, the ministers are selected from the members of parliament usually, and in any event are entitled to seats in the chambers, and must be heard whenever they desire to speak. They are the heads of the several administrative departments of the general government, and are the leaders of the majority in the legislature.

500. The French Judicial System. The French judicial system is purely statutory, the only constitutional provision being that which relates to the senate as an extraordinary court for specified cases. Of the system of courts, the highest is the court of cassation. Next below this court are the courts of appeal which hear cases from the courts of first instance, while these in turn hear appeals from decisions of the justices of the peace. These smaller courts try civil cases and act as police judges for the trial of petty offenses. There are numerous special courts. The ordinary civil courts are without juries, the judges alone deciding the question of fact as well as of law. The judges are appointed by the president and their tenure, excepting justices of the peace, is during good behavior. They can be removed only by the court first named. In the government of local affairs, France differs from the English and American governments in that the organs of local government are not general authorities of enumerated powers, no attempt being made at specification. To pre-

vent local administrative units from misusing such wide powers, a method of central administrative control has been introduced which is the distinguishing feature of French government. Through these local officials the central government administers matters of general concern.

501. The Constitution of Mexico. The government of Mexico may be described as a presidential federal republic composed of states and territories, and a federal district. It has a written constitution of great length, closely modelled after the constitution of the United States including a bill of rights.

502. Legislative Power in Mexico. The legislative power is vested in the congress consisting of a house of representatives and a senate. The members of the house of representatives are elected by indirect secret ballot for a term of two years, by an electorate which consists practically of all male adults. The senate is composed of two senators from each state and two from the federal district, chosen in the same manner as the representatives, for a term of four years, one-half the number expiring every second year. Senators and representatives receive a salary of $3,000, and enjoy immunity from arrest for their opinions expressed in the discharge of their duties. The two houses enjoy substantial equality in legislative matters, aside from the introduction of revenue measures which are first introduced in the house of representatives. Legislative measures may be initiated (that is, introduced) by the president of the republic and the various state legislatures, as well as by individual senators and representatives. The president has veto power, but an absolute majority of each house may repass a law

over his veto. The powers of congress are specifically enumerated with great detail in the constitution.

503. The Executive Power in Mexico. The executive power is vested in a president chosen indirectly by electors who are themselves elected by popular vote. The term of the president is for four years, and he is eligible for re-election for any number of successive terms. No provision is made for a vice-president, excepting in case of the disability or absence of the president when congress may choose an acting president. The president cannot resign only with the approval of congress. His chief powers are to execute the laws, to appoint and remove military officials, to declare war with the consent of congress, dispose of the army and navy, grant letters of marque and reprisal, negotiate treaties, receive ambassadors and ministers, to call special sessions of congress, grant pardons, and exclusive privileges to discoverers and inventors. The president acts through a cabinet and every decree, order, and regulation of his must be signed by a member of the cabinet in order to be valid. The members of the cabinet do not occupy seats in congress, and are not responsible to that body.

504. The Judicial Power of Mexico. The judicial power of the government is vested in a supreme court and in district and circuit courts. The judges of the supreme court are chosen by electors for a term of six years. The organization of the district and circuit courts is determined by statute. The jurisdiction of these federal courts extends to cases involving federal law, to cases in which the republic or a state is a party to maritime cases, to cases arising under treaties, and to cases concerning diplomatic agents.

The federal constitution requires that the several states of the republic shall guarantee republican form of local government. Each state has its own constitution, code of laws, governor, legislature, and local officials much the same as in the United States.

505. Switzerland: its Legislature. The republic of Switzerland is a confederation with a written constitution composed of cantons or states. Its legislature consists of a federal assembly of two houses, the national council and the council of the states. The two houses hold separate sessions in the legislative matters and joint sessions in the exercises of certain electoral and judicial functions. In matters of legislation both houses have equal authority. The council of the states is composed of forty-four members, two from each canton, excepting in three cantons which are divided, each half canton choosing one member. They are chosen according to the ideas prevailing in each canton, specifications as to qualifications, compensation, mode of election, etc., being made in the constitution. The result is that the greatest variety of provisions prevail in the different cantons. The terms vary from one to four years. The national council or popular chamber of the legislature consists of members chosen by direct universal suffrage for a term of three years on the bases of population. Both houses choose their own officers. Their joint duties extend to the granting of pardons, and to the election of the federal council, the supreme court, the chancellor, and the commander of the army. The ordinary legislative power of the federal council is very wide and extends to many subjects which in the United States are left to the regulation of the separate states.

506. Switzerland: its Executive. The executive power is vested by the constitution in a federal council of seven members elected for a term of three years, by joint ballot of both houses of the federal legislature. It is the custom to choose the members of this council from the membership of the legislature, and to re-elect them for a long period of time. The work of administration is divided into seven departments, and one member of the council is put in charge of each department, but the act of any councilor in his department is considered to be the act of the whole council. The council is organized under a president and a vice-president, who is a member of the council chosen by the legislature for one year. This council sustains a relation to the legislature similar to the cabinet in the parliamentary system of government. As members of the legislature councilors take an active part in its deliberation, introduce bills, enter into the debates, and in various ways exercise a great influence upon the legislative work. Their administrative duties extend to controversies usually settled by special administrative courts, has large supervisory power over local administration in the various cantons, especially in the administration of federal law. In addition to these functions the council has extensive powers usually exercised by a nation's executive.

507. Switzerland: its Judicial Department. The judicial power of Switzerland is vested in a supreme court consisting of fourteen judges, elected for a term of six years by the federal assembly, which also designates a president and a vice-president of the court for two years. The court is divided into three sections, each of which holds a session in one of the five judicial districts into which Switzerland is divided.

The jurisdiction of the federal court extends to conflicts of authority between the confederation and the cantons, to disputes between cantons and to complaints of the violation of individual rights. It also has jurisdiction over civil matters concerning suits between the confederation and the cantons or between the cantons themselves, or suits against the confederation or between the cantons and private individuals or corporations. Cases may be appealed from the cantonal courts to the supreme court, where the amount exceeds 3000 francs (about $600). Its criminal jurisdiction extends to cases of treason, violations against federal authorities, and offenses against the law of nations, political disorder, etc. The local government is largely in the hands of the canton, districts, and communes. Each canton has its own constitution, which generally provides for a legislative body of one chamber elected by popular suffrage for a term of three or four years. It enacts laws, votes taxes, and otherwise supervises the administration of local affairs.

508. The Unitary State. States may be classified as (1) single or unitary states, (2) confederations, and (3) federations or federal states. The single or unitary state is the simplest form. In it the national government exists quite independently of any minor communities or governments that may exist within it; while they, on the other hand, owe to it not only such powers as they possess but usually their very existence. They are mere subdivisions of the national government. Moreover, in this form of the state the general government operates directly not only upon such minor communities, but upon the individual citizens. In short, there is in the unitary state

no suggestion of a division of sovereignty between two governments, one the national government, the other a subordinate government such as our state governments. France and Great Britain are examples of unitary states.

509. The Confederation. As to the confederation, it is sometimes questioned whether it can properly be called a state at all, since it very rarely if ever possesses the distinguishing characteristic of the state, that is, complete sovereignty. It is a union of states for certain definite purposes, particularly the purpose of defence, generally not very permanent in its character, in which the separate states retain their independence, delegating only certain portions of their authority to the union, which acts merely as their agent. Its members are not, as in the unitary state, separate individuals, nor does it deal directly with the individual. It has, as Mr. Bryce says, "no right of taxing him, or judging him, or making laws for him;" that power belongs only to the states. At the same time, in its relations with other states the confederation, so long as it exists, presents much the same character as the completely sovereign state and must be dealt with by such states in practically the same way. Perhaps the most famous confederation of ancient times was the Delian Confederacy in Greece. In modern times there have been several confederations of German states, resulting finally in the formation of the German Empire, which is a federation; while a still more familiar instance is our own government as it was under the articles of confederation.

510. The Federal State. The federal state is a modern political development. In a way it may be said to stand

between the unitary state and the confederation; or perhaps it would be more accurate to say that it combines the characteristics of both. Like the confederation, it is a union of states; but unlike it, it is itself as unquestionably a state as is the most powerful of unitary states. Like the unitary state, it has a direct claim to the obedience of the individual citizen; but unlike it, the subordinate communities are not mere subdivisions with powers delegated to them by the general government. In some spheres of state action they are completely independent states. In others, namely, in matters pertaining to the common interest, the union alone is supreme. Neither the national government nor the state government has complete authority. To give a more formal definition, a federation is a state made up by the union of other states that have permanently surrendered their right to act independently in matters pertaining to the common interest, while they have in other respects retained their complete independence. Switzerland, the German Empire and the United States are examples of the federal state.

511. Further Classifications. Whether a state be unitary, confederated, or federal, it assumes in modern times one of two forms: it is either *monarchical* or *democratic*. Monarchies are subject to two further classifications: (1) they are either *absolute*, where the power of the monarch is left uncontrolled, or *limited*, where the power of the monarch is controlled by law; (2) they are *hereditary* or *elective*, according as the office is transmitted to the monarch in the line of descent or as he is chosen by the votes of his subjects or of a part of them. Democracies likewise assume two forms: they are (1) pure democracies, in which all the mem-

bers of the community share directly in the government; or (2) representative democracies or republics, in which the government is carried on by a comparatively small number of persons, who have been chosen by the whole body of citizens to act for them. Of the above classifications that into hereditary and elective monarchies is probably sufficiently clear. The others require some further consideration.

512. Absolute Monarchy. Among the great civilized nations of to-day the *absolute* monarchy is rare indeed. Russia and Turkey are the only countries in Europe that can be so classed; and even they possess a nominal constitution, though, in actual practice, no other law than the will of the czar[1] or sultan is enforced. Where the absolute monarchy does exist, however, it differs very materially from the absolute monarchy of antiquity. The latter was governed, not by what we now call law, but by custom — rules of action that had been handed down from time immemorial and that bound the monarch as firmly as they did his humblest subject. The reign of this customary law the monarch could not disturb. He could only issue commands covering specific cases and affecting particular individuals. Not so with the absolute monarch of to-day. He may legislate on as large a scale as seems to him good; not issue edicts only, covering particular cases, but make general rules of law universally applicable. He may do that to-day, and to-morrow he may sweep it all away with a word, for his word is the only law. In short, the absolute monarch of to-day can wield a power that the reign of custom made quite impossible to the ancient

[1] The Russian Douma or legislature and the movement of the "young Turks," tend to modify the power of the monarch.

monarch. In spite of this, however, the ancient monarchy as contrasted with the modern limited monarchy was essentially an absolutism.

513. Limited Monarchy. The modern limited monarchy, called also the constitutional monarchy, is one in which the monarch is limited in the exercise of his power by the constitution of the kingdom. The extent of the limitations imposed varies greatly in different countries, and the resulting governments shade off from monarchies strongly tinged with absolutism to monarchies more democratic in some respects than the United States. All the advanced governments of the world, no matter what their form, have become during the last hundred years so deeply penetrated by the democratic idea that to-day we are quite justified in saying, that monarchies exist only by democratic consent.

514. Pure Democracy. There remains to be considered that form of government toward which all modern governments seem to tend in principle, at least, if not in form. The pure democracy may be passed over lightly. Assemblies in which all the people appear in order to take part in the discussion and to vote, become obviously impossible as soon as the body politic attains any considerable size. The pure democracy as a form of general government, that is, as a form of government for the whole people, has, therefore, passed away among civilized nations. As a form of local government it still exists in this country in the town meeting.

515. Representative Democracy. The democracy of the modern world has assumed another form; it has become the representative democracy of the republic. This scheme,

by which the political powers of a whole class or body of individuals are delegated to a single individual who acts as their agent, had been in use among the ancestors of the English people even before they left their homes in North Germany and Denmark; and their descendants have never relinquished their hold upon it. What our American forefathers did was to apply this principle not to a class but to a whole people — in other words, to democratize it. That, however, was a long step in advance. It meant that they had founded the first great nation in the world whose government seemed to offer a solution for the old problem of how to maintain democratic institutions in a country without placing impossible and undesirable restrictions upon its growth. Whether the problem has even yet been completely solved remains to be seen.

516. What is the Best Form of Government? The question is not infrequently asked, "What is the best form of government?" It is not a question that can be answered dogmatically. There is no absolutely "best" form of government — best under all conditions. To conclude that republicanism, because it has been successful in the United States, would be an equally desirable form of government for the inhabitants of Borneo, let us say, or for the Chinese Empire, or for Russia, would be simply absurd. Perhaps the most we can say is that the best form of government is that through which, under given conditions, the state can best accomplish its end, whether that form be monarchical or democratic. It is nevertheless true that there are certain advantages and certain disadvantages naturally inherent in each of these forms. The monarchy is naturally a strong centralized government, that is, a government in

which great power rests in the hands of a single person, and can, therefore, bring things to pass with vigor and despatch; the republic, on the contrary, tends naturally toward decentralization, that is, division of political power among all the members of the body politic, and is not so strong on its administrative side while it tends to develop a stronger individualism.

QUESTIONS ON THE TEXT

1. In what way is the individual citizen affected by the relation of one nation to another, that is, by international law?
2. How does the constitution of the United States differ from that of England? From that of France? From that of Germany?
3. Give one main difference between a federal state and a confederation. Illustrate by naming a country which represents your definition.
4. Compare the powers of the president of the United States with those of the king of England? With the German emperor?
5. How does the executive body of Switzerland differ from that of the English cabinet? Compare the power of the French and Mexican presidents.
6. Show how the imperial chancellor of Germany permits the people to in reality criticize the emperor? What body performs the same duty in the French republic? In the English system?
7. Name the branch of the national legislature corresponding to our house of representatives in England, Germany, France.
8. Define unitary state. Absolute and limited monarchies. Pure and representative democracies.
9. What conditions enter into a "best form of government"?

APPENDIX

THE CONSTITUTION OF THE STATE OF NEW YORK

ADOPTED NOVEMBER 6, 1894, AND AS AMENDED AND IN FORCE JANUARY 1, 1910

THE CONSTITUTION

We, the People of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I

Persons not to be disfranchised. Sect. 1. No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Trial by jury. Sect. 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

Freedom of worship; religious liberty. Sect. 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Habeas Corpus. Sect. 4. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

Excessive bail and fines. SECT. 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

Grand jury — Bill of rights. SECT. 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Compensation for taking private property; private roads; drainage of agricultural lands. SECT. 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of free-holders and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

Freedom of speech and press; criminal prosecutions for libel. SECT. 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that

right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Right to assemble and petition; divorce; lotteries, pool-selling and gambling, laws to prevent. SECT. 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, bookmaking, or any other kind of gambling hereafter be authorized or allowed within this state; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

Escheats. SECT. 10. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

Feudal tenures abolished. SECT. 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

Allodial tenures. SECT. 12. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Leases of agricultural lands. SECT. 13. No lease or grant of agricultural land for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

Fines and quarter-sales abolished. SECT. 14. All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made shall be void.

Purchase of lands of Indians. SECT. 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made of, or with the Indians, shall be valid unless made under the authority, and with the consent of the Legislature.

Common law and acts of the colonial and State Legislatures. SECT. 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

Grants of land made by the king of Great Britain since 1775; prior grants. SECT. 17. All grants of land within this State, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts, contracted by the State or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

Damages for injuries causing death. SECT. 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

ARTICLE II

Qualifications of voters. SECT. 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

Persons excluded from the right of suffrage. SECT. 2. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The Legislature shall enact

laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.

Certain occupations and conditions not to affect residence. SECT. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or partly supported at public expense or by charity; nor while confined in any public prison.

Registration and election laws to be passed. SECT. 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last preceding state enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

Manner of voting. SECT. 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

Registration and election boards to be bi-partisan, except at town and village elections. SECT. 6. All laws creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties

respectively, as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

ARTICLE III

Legislative powers. SECT. 1. The legislative power of this State shall be vested in the Senate and Assembly.

Number and terms of senators and assemblymen. SECT. 2. The Senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

[1] **Senate districts.** SECT. 3. The state shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive. (Here follows an enumeration of the districts.)

Enumerations and reapportionments. SECT. 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the

[1] For present apportionment of Senate districts, see chapter 727, Laws of 1907.

population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

Apportionment of assemblymen; creation of assembly districts. SECT. 5. The members of the Assembly shall be chosen by single districts and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every

county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

[1] Until after the next enumeration, members of the Assembly shall be apportioned to the several counties as follows: (Here follows an enumeration of the counties with the number of assemblymen apportioned to each.)

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of Assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In coun-

[1] For present apportionment of members of Assembly, see chapter 727, Laws of 1907.

ties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the state enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

Compensation of members. SECT. 6. Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the Court for the Trial of Impeachments, and such members of the

Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

Civil appointments of members void. SECT. 7. No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

Persons disqualified from being members. SECT. 8. No person shall be eligible to the Legislature, who at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or any officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

Time of elections. SECT. 9. The elections of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

Powers of each house. SECT. 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

Journals; open sessions; adjournments. SECT. 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

Members not to be questioned for speeches. SECT. 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

Bill may originate in either house. SECT. 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

Enacting clause of bills. SECT. 14. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

Manner of passing bills. SECT. 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of the majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

Private and local bills not to embrace more than one subject. SECT. 16. No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

Existing law made applicable to be inserted. SECT. 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable except by inserting it in such act.

Cases in which private and local bills shall not be passed; restrictions as to laws authorizing street railroads. [1] SECT. 18. The Legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

[1] As amended November 5, 1901.

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

Locating or changing county seats.

Providing for changes of venue in civil or criminal cases.

Incorporating villages.

Providing for election of members of boards of supervisors.

Selecting, drawing, summoning or impaneling grand or petit jurors.

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be

constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

Private claims not to be audited by Legislature. SECT. 19. The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

Two-thirds bills. SECT. 20. The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

Appropriation bills. SECT. 21. No money shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Restrictions as to provisions in the appropriation or supply bills. SECT. 22. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

Certain sections not to apply to commission bills. SECT. 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes.

Tax bills to state tax distinctly. SECT. 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

When ayes and nays necessary; three-fifths to constitute quorum. SECT. 25. On the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a

debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

Boards of supervisors. [1]SECT. 26. There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city.

Local legislative powers. [2]SECT. 27. The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may, from time to time, deem expedient, and in counties which now have, or may hereafter have, county auditors or other fiscal officers, authorized to audit bills, accounts, charges, claims or demands against the county, the Legislature may confer such powers upon said auditors, or fiscal officers, as the Legislature may, from time to time deem expedient.

Extra compensation prohibited. SECT. 28. The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.

Prison labor; contract system abolished. SECT. 29. The Legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at

[1] As amended November 7, 1899.
[2] As amended November 2, 1909.

any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

ARTICLE IV

Executive power. SECT. 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

Qualifications of Governor and Lieutenant-Governor. SECT. 2. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding his election a resident of this State.

Election of Governor and Lieutenant-Governor. SECT. 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

Duties and powers of Governor; compensation. SECT. 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State. He shall have power to convene the Legislature,

or the Senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

Reprieves, commutations, and pardons to be granted by Governor. SECT. 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

When Lieutenant-Governor to act as Governor. SECT. 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

Qualifications and duties of Lieutenant-Governor; succession to the Governorship. SECT. 7. The Lieutenant-Governor shall pos-

sess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

Salary of Lieutenant-Governor. SECT. 8. The Lieutenant-Governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

Bills to be presented to Governor; approval; passage of bill by Legislature if not approved. SECT. 9. Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor

within thirty days after such adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the Legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the Governor. All the provisions of this section, in relation to bills not approved by the Governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

ARTICLE V

State officers. SECT. 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section two of this article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall, at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

First election of State officers. SECT. 2. The first election of the Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years

thereafter, their successors shall be chosen for the term of two years.

Superintendent of public works; appointment; powers and duties of. SECT. 3. A superintendent of public works shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office until the end of the term of the Governor, by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor; subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the Governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the cause of such removal, and shall report such removal and the cause thereof to the Legislature at its next session. The Superintendent of Public Works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the Legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the Superintendent of Public Works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the Superintendent of Public Works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the Governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The

Superintendent of Public Works shall perform all the duties of the former Canal Commissioners and Board of Canal Commissioners, as now declared by law, until otherwise provided by the Legislature. The Governor, by and with the advice and consent of the Senate, shall have power to fill vacancies in the office of Superintendent of Public Works; if the Senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the Senate.

Superintendent of State Prisons, appointment; powers and duties of. SECT. 4. A Superintendent of State Prisons shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of State prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the Superintendent. The Comptroller shall appoint the clerks of the prisons. The Superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the Inspectors of State Prisons. The Governor may remove the Superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

Commissioners of the land office; of the canal fund; canal board. SECT. 5. The Lieutenant-Governor, Speaker of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor and the Superintendent of Public Works.

Powers and duties of boards. SECT. 6. The powers and duties of the respective boards, and of the several officers in this article

mentioned, shall be such as now are or hereafter may be prescribed by law.

State Treasurer; suspension by Governor. SECT. 7. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

Certain offices abolished. SECT. 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interest of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

Civil service appointments and promotions. SECT. 9. Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this State, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

ARTICLE VI

Supreme Court; how constituted; judicial districts. [1] SECT. 1. The Supreme Court is continued with general jurisdiction in law and equity subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this

[1] As amended November 7, 1905.

article. The existing judicial districts of the State are continued until changed as hereinafter provided. The Supreme Court shall consist of the justices now in office, and of the Judges transferred thereto by the fifth section of this article, all of whom shall continue to be Justices of the Supreme Court during their respective terms, and of twelve additional Justices who shall reside in and be chosen by the electors of the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the Justices to be thereafter elected in the districts so altered.

The Legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last State, or Federal census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last State or Federal census or enumeration. The Legislature may erect out of the Second Judicial District as now constituted, another judicial district and apportion the justices in office between the districts, and provide for the election of additional justices in the new district not exceeding the limit herein provided.

Judicial departments; appellate division, how constituted; Governor to designate justices; reporter; time and place of holding courts. [1] SECT. 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but

[2] As amended November 7, 1905.

without increasing the number thereof. There shall be an Appellate Division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be necessary to a decision. No more than five justices shall sit in any case. From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the Appellate Division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the justices so designated to sit in the Appellate Division, in each department shall be residents of the department. He may also make temporary designations in case of the absence or inability to act of any justice in the Appellate Division, or in case the presiding justice of any Appellate Division shall certify to him that one or more additional justices are needed for the speedy disposition of the business before it. Whenever the Appellate Division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination. No justice of the Appellate Division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court, and those pertaining to the Appellate Division, or to the hearing and decision of motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the Supreme Court and exercise any of the powers of a justice of the Supreme Court in any county or judicial district in any other department of the State. From and after the last day of December, eighteen hundred and

ninety-five, the Appellate Division shall have the jurisdiction now exercised by the Supreme Court at its general terms and by the general terms of the Court of Common Pleas for the city and county of New York, the Superior Court of the city of New York, the Superior Court of Buffalo and the city of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter. The justices of the Appellate Division in each department shall have power to fix the times and places for holding special terms therein, and to assign the justices in the departments to hold such terms; or to make rules therefor.

Judge or justice not to sit in review; testimony in equity cases. SECT. 3. No Judge or Justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

Terms of office; vacancies, how filled. SECT. 4. The official terms of the Justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of Justice of the Supreme Court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

City courts abolished; judges become justices of Supreme Court; salaries; jurisdiction vested in Supreme Court. SECT. 5. The Superior Court of the City of New York, the Court of Common Pleas for the City and County of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-

six, and thereupon the seals, records, papers and documents of or belonging to such courts, shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall, for the remainder of the terms for which they were elected or appointed, be Justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other Justices of the Supreme Court residing in the same counties. Their successors shall be elected as Justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the City and County of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such Justice or Justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.

Circuit Courts and Courts of Oyer and Terminer abolished. SECT. 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any Justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county.

Court of Appeals. [1] SECT. 7. The Court of Appeals is continued. It shall consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of

[1] As amended November 7, 1899.

the State. The official terms of the chief judge and associate judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. Whenever and as often as a majority of the judges of the Court of Appeals shall certify to the Governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the Governor shall designate not more than four justices of the Supreme Court to serve as associate judges of Court of Appeals. The justices so designated shall be relieved from their duties as justices of the Supreme Court and shall serve as associate judges of the Court of Appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the Supreme Court. The Governor may designate justices of the Supreme Court to fill vacancies. No justice shall serve as associate judge of the Court of Appeals except while holding the office of Justice of the Supreme Court, and no more than seven judges shall sit in any case.

Vacancy in Court of Appeals, how filled. SECT. 8. When a vacancy shall occur otherwise than by expiration of term, in the office of Chief or Associate Judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session or if not in session the Governor, may fill such vacancy by appointment. If any such appointment of Chief Judge shall be made from among the Associate Judges, a temporary appointment of Associate Judge shall be made in like manner; but in such case the person appointed Chief Judge shall not be deemed to vacate his office of Associate Judge any longer than until the expiration of his appointment as Chief Judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of Judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Jurisdiction of Court of Appeals. SECT. 9. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as a right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The Appellate Division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders made or judgments rendered by any General Term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

Judges not to hold any other office. SECT. 10. The Judges of the Court of Appeals and the Justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

Removal of Judges. SECT. 11. Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the

journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

Compensation; age restriction; assignment by Governor. [1] SECT. 12. No person shall hold the office of Judge or Justice of any court longer than until and including the last day of December next after he shall be seventy years of age. Each Justice of the Supreme Court shall receive from the State the sum of ten thousand dollars per year. Those assigned to the Appellate Divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars, and the Presiding Justices thereof the sum of two thousand five hundred dollars per year. Those Justices elected in the first and second judicial departments shall continue to receive from their respective cities, counties, or districts as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those Justices elected in any judicial department other than the first or second, and assigned to the Appellate Divisions of the first or second departments shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the Justices of those departments. A Justice elected in the third or fourth department assigned by the Appellate Division or designated by the Governor to hold a trial or special term in a judicial district other than that in which he is elected shall receive in addition ten dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the State and charged upon the judicial district where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to said Justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the Judges and Justices now in office and to those hereafter elected. The Judges and Justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section five of this article. No per-

[1] As amended November 2, 1909.

son shall hold the office of Judge or Justice of any court longer than until and including the last day of December next after he shall be seventy years of age. No Judge or Justice elected after the first day of January, one thousand eight hundred and ninety-four, shall be entitled to receive any compensation after the last day of December next after he shall be seventy years of age; but the compensation of every Judge of the Court of Appeals or Justice of the Supreme Court elected prior to the first day of January, one thousand eight hundred and ninety-four, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such Judge or Justice ten years or more, shall be continued during the remainder of the term for which he was elected; but any such Judge or Justice may, with his consent, be assigned by the Governor, from time to time, to any duty in the Supreme Court while his compensation is so continued.

Trial of impeachments. SECT. 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators, or the major part of them, and the Judges of the Court of Appeals, or the major part of them. On the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

County Courts. SECT. 14. The existing County Courts are continued, and the Judges thereof now in office shall hold their offices

until the expiration of their respective terms. In the county of Kings there shall be two County Judges and the additional County Judge shall be chosen at the next general election held after the adoption of this article. The successors of the several County Judges shall be chosen by the electors of the counties for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every County Judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A County Judge of any county may hold County Courts in any other county when requested by the judge of such other county.

Surrogates' Courts; Surrogates, their powers and jurisdiction; vacancies. SECT. 15. The existing Surrogates' Courts are continued, and the Surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogates' Courts shall have the jurisdiction and powers which the Surrogates and existing Surrogates' Courts now possess, until otherwise provided by the Legislature. The County Judge shall be Surrogate of his

county, except where a separate Surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate Surrogate, the Legislature may provide for the election of a separate officer to be Surrogate, whose term of office shall be six years. When the Surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No County Judge or Surrogate shall hold office longer than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of County Judge or Surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any County Judge or Surrogate shall not be increased or diminished during his term of office. For the relief of Surrogates' Courts the Legislature may confer upon the Supreme Court in any County having a population exceeding four hundred thousand, the powers and jurisdiction of Surrogates, with authority to try issues of fact by jury in probate cases.

Local judicial officers. SECT. 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of County Judge and of Surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

Justices of the peace; district court justices. SECT. 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect Justices of the Peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the Peace and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the Peace and District Court Justices may be elected in the different cities of this State in such manner and with such powers, and for such terms, respectively, as

are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

Inferior local courts. SECT. 18. Inferior local courts of civil and criminal jurisdiction, may be established by the Legislature, but no inferior local court, hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

Clerks of courts. SECT. 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The Justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said Justices. The Clerk of the Court of Appeals shall keep his office at the seat of government. The Clerk of the Court of Appeals and the Clerks of the Appellate Division shall receive compensation to be established by law and paid out of the public treasury.

No judicial officer, except justice of the peace, to receive fees; not to act as attorney or counselor. SECT. 20. No judicial officer, except Justices of the Peace, shall receive to his own use any fees or perquisites of office; nor shall any Judge of the Court of Appeals, or Justice of the Supreme Court, or any County Judge or Surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record of this State, or act as referee. The Legislature may impose a similar prohibition upon County Judges and Surrogates in other counties. No one shall be eligible to the office of Judge of the Court of Appeals, Justice of the Supreme Court, or, except in the county of Hamilton, to the office of County Judge or Surrogate, who is not an attorney and counselor of this State.

Publication of statutes. SECT. 21. The Legislature shall provide for the speedy publication of all statutes, and shall regulate the

reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

Terms of office of present justices of the peace and local judicial officers. SECT. 22. Justices of the Peace and other local judicial officers provided for in sections seventeen and eighteen in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

Courts of special sessions. SECT. 23. Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

ARTICLE VII

State credit not to be given. SECT. 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

State debts, power to contract. SECT. 2. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debt so contracted, and to no other purpose whatever.

State debts to repel invasions. SECT. 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Limitation of legislative power to create debts. [1] SECT. 4. Except the debts specified in sections two and three of this article, no debts shall be hereafter contracted by or in behalf of this State, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay,

[1] As amended November 2, 1909.

the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage or at any general election when any other law, or any bill shall be submitted to be voted for or against. The Legislature may provide for the issue of bonds of the State to run for a period not exceeding fifty years in lieu of bonds heretofore authorized but not issued and shall impose and provide for the collection of a direct annual tax for the payment of the same as hereinbefore required. When any sinking fund created under this section shall equal in amount the debt for which it was created, no further direct tax shall be levied on account of said sinking fund, and the Legislature shall reduce the tax to an amount equal to the accruing interest on such debt. The Legislature may from time to time alter the rate of interest to be paid upon any State debt, which has been or may be authorized pursuant to the provisions of this section, or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon

any part of such debt or upon any bond or other evidence thereof, which has been, or shall be created or issued before such alteration. In case the Legislature increase the rate of interest upon any such debt, or part thereof, it shall impose and provide for the collection of a direct annual tax to pay and sufficient to pay the increased or altered interest on such debt as it falls due and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof, and shall appropriate annually to the sinking fund moneys in amount sufficient to pay such interest and pay and discharge the principal of such debt when it shall become due and payable.

Sinking fund, how kept and invested. SECT. 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

Claims barred by statute of limitations. SECT. 6. Neither the Legislature, canal board, nor any person or persons acting in behalf of the State, shall audit, allow, or pay any claim which, as between citizens of the State, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

Forest Preserve. SECT. 7. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Canals, not to be sold; not applied to certain canals; disposition of funds. SECT. 8. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they

shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.

No tolls to be imposed; contracts for work and materials; no extra compensation. SECT. 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

Canal improvement, and cost thereof. SECT. 10. The canals may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the State treasury, or by equitable annual tax.

Payment of State debts. [1] SECT. 11. The Legislature may appropriate out of any funds in the treasury, moneys to pay the accruing interest and principal of any debt heretofore or hereafter created, or any part thereof and may set apart in each fiscal year, moneys in the State treasury as a sinking fund to pay the interest as it falls due and to pay and discharge the principal of any debt heretofore or hereafter created under section four of article seven of the consti-

[1] As adopted November 7, 1905; in effect January 1, 1906.

tution until the same shall be wholly paid, and the principal and income of such sinking fund shall be applied to the purpose for which said sinking fund is created and to no other purpose whatever; and, in the event such moneys so set apart in any fiscal year be sufficient to provide such sinking fund, a direct annual tax for such year need not be imposed and collected, as required by the provisions of said section four of article seven, or of any law enacted in pursuance thereof.

Improvement of highways. [1] SECT. 12. A debt or debts of the State may be authorized by law for the improvement of highways. Such highways shall be determined under general laws, which shall also provide for the equitable apportionment thereof among the counties. The aggregate of the debts authorized by this section shall not at any one time exceed the sum of fifty millions of dollars. The payment of the annual interest on such debt and the creation of a sinking fund of at least two per centum per annum to discharge the principal at maturity shall be provided by general laws whose force and effect shall not be diminished during the existence of any debt created thereunder. The Legislature may by general laws require the county or town or both to pay to the sinking fund the proportionate part of the cost of any such highway within the boundaries of such county or town and the proportionate part of the interest thereon, but no county shall at any time for any highway be required to pay more than thirty-five hundredths of the cost of such highway, and no town more than fifteen hundredths. None of the provisions of the fourth section of this article shall apply to debts for the improvement of highways hereby authorized.

ARTICLE VIII

Corporations, formation of. SECT. 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

[1] As adopted November 7, 1905; in effect January 1, 1906.

Dues of corporations. SECT. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

Corporation, definition of term. SECT. 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

Savings bank charters; restrictions upon trustees; special charters not to be granted. SECT. 4. The Legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Specie payment. SECT. 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

Registry of bills or notes. SECT. 6. The Legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

Liability of stockholders of banks. SECT. 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

Billholders of insolvent bank, preferred creditors. SECT. 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

Credit or money of the State not to be given. SECT. 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.

Limitation of indebtedness of counties, cities, towns and villages; exception as to city of New York. [1] SECT. 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness

[1] As amended November 2, 1909.

or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of one per centum of the assessed valuation of the real estate of said city subject to taxation. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water, in excess of the limitation of indebtedness fixed herein, shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by the city of New York after the first day of January, nineteen hundred and four, and debts incurred by any city of the second class after the first day of January, nineteen hundred and eight, and debts incurred by any city of the third class after the first day of January, nineteen hundred and ten, to provide for the supply of water, shall not be so included; and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of

time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization instalments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The Legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The Legislature may in its discretion confer appropriate jurisdiction on the Appellate Division of the Supreme Court in the first judicial department for the purpose of determining the amount of any debt to be so excluded. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

State board of charities; State commission in lunacy; State commission of prisons. SECT. 11. The Legislature shall provide for a state board of charities, which shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated,

which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions, hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a state commission in lunacy which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a state commission of prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

Boards appointed by Governor. SECT. 12. The members of the said board and of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense.

Existing laws to remain in force. SECT. 13. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law.

Maintenance and support of inmates of charitable institutions. SECT. 14. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules estab-

lished by the state board of charities. Such rules shall be subject to the control of the Legislature by general laws.

Commissioners continued in office. SECT. 15. Commissioners of the state board of charities and commissioners of the state commission in lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the Legislature shall otherwise provide. The Legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

ARTICLE IX

Common schools. SECT. 1. The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

Regents of the university. SECT. 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the Legislature, shall be exercised by not less than nine regents.

Common school, literature and the United States deposit funds. SECT. 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

No aid in denominational schools. SECT. 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or

inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

ARTICLE X

Sheriffs, clerks of counties, district attorneys and registers; Governor may remove. SECT. 1. Sheriffs, clerks of counties, district attorneys and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the Legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

Appointment or election of officers, not provided for by this Constitution. SECT. 2. All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

Duration of term. SECT. 3. When the duration of any office is not provided by this Constitution it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

Time of election. SECT. 4. The time of electing all officers named in this article shall be prescribed by law.

Vacancies in offices; how filled. SECT. 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

Political year. SECT. 6. The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday in January.

Removal from office for misconduct, etc. SECT. 7. Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

Office deemed vacant. SECT. 8. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution.

Compensation of officers. SECT. 9. No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other state officers named in the Constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

ARTICLE XI

State militia. SECT. 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject however to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State.

Enlistment. SECT. 2. The Legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

Organization of militia. SECT. 3. The militia shall be organized and divided into such land and naval, and active and reserve forces, as the Legislature may deem proper, provided however that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the Legislature at each session to make sufficient appropriations for the maintenance thereof.

Appointment of military officers by the Governor. SECT. 4. The Governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals.

Manner of election of military officers prescribed by Legislature. SECT. 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

Commissioned officers; their removal. SECT. 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

ARTICLE XII

Organization of cities and villages. [1]SECT. 1. It shall be the duty of the Legislature to provide for the organization of cities and

[1] As amended November 7, 1905.

incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the State or by any county, city, town, village or other civil division of the State, or by any contractor or subcontractor performing work, labor or services for the State, or for any county, city, town, village or other civil division thereof.

Classification of cities; general and special city laws; special city laws; how passed by Legislature and accepted by cities. [1] SECT. 2. All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs or government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice

[1] As amended November 5, 1907.

and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

Election of city officers, when to be held; extension and abridgment of terms. SECT. 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections of any judicial officer, except judges and justices of inferior local courts.

ARTICLE XIII

Oath of office. SECT. 1. Members of the Legislature, and all officers executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

Official bribery and corruption. SECT. 2. Any person holding office under the laws of this State, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

Offer or promise to bribe. SECT. 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying

in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be guilty of an attempt to bribe, which is hereby declared to be a felony.

Person bribed or offering a bribe may be a witness. SECT. 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Free passes, franking privileges, etc., not to be received by public officers; penalty. SECT. 5. No public officer, or person elected or appointed to a public office, under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney-General. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

Removal of district attorney for failure to prosecute; expenses of prosecutions for bribery. SECT. 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any per-

son holding office under the laws of this State, within such county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

ARTICLE XIV

Amendments to Constitution, how proposed, voted upon and ratified. SECT. 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

Future constitutional conventions; how called; election of delegates; compensation; quorum; submission of amendments; officers; rules; vacancies; taking effect. SECT. 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-

large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

Amendments of convention and Legislature submitted coincidently. SECT. 3. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the Legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved,

be deemed to supersede the amendment so proposed by the legislature.

ARTICLE XV

Time of taking effect. SECT. 1. This Constitution shall be in force from and including the first day of January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

Done in Convention at the Capitol in the city of Albany, the twenty-ninth day of September, in the year one thousand eight hundred ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

JOSEPH HODGES CHOATE,
President and Delegate-at-Large

CHARLES ELLIOTT FITCH,
Secretary

CONSTITUTION OF THE UNITED STATES

Preamble

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.—LEGISLATIVE DEPARTMENT

Section 1.—Congress

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.[1]

Section 2.—House of Representatives

The House of Representatives shall be composed of members chosen every second year by the people of the several States, and

Election of Members

the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained

Qualifications

to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union,

[1] The term of each Congress is two years. It assembles on the first Monday in December and "expires at noon of the fourth of March next succeeding the beginning of its second regular session, when a new Congress begins."

according to their respective numbers,[1] which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.[2] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative: and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

Apportionment

When vacancies happen in the representation from any State, the executive authority[3] thereof shall issue writs of election to fill such vacancies.

Vacancies

The House of Representatives shall choose their Speaker[4] and other officers; and shall have the sole power of impeachment.

Officers Impeachment

Section 3. — Senate

The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote.

Number of Senators: Election

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; of the third class, at

[1] The apportionment under the census of 1910 is one representative for about 220,000 persons.

[2] The word "persons" refers to slaves. This paragraph has been amended (Amendments XIII and XIV) and is no longer in force.

[3] Governor.

[4] The speaker is one of the representatives; the other officers — clerk, sergeant-at-arms, postmaster, doorkeeper, etc. — are not.

the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive[1] thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Classification

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Qualifications

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

President of Senate

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Officers

The Senate shall have the sole power to try all impeachments: When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief-Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Trials of Impeachment

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Judgment in Case of Conviction

Section 4. — Both Houses

The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.[2]

Manner of electing Members

[1] Governor.

[2] This is to prevent Congress from fixing the places of meeting of the state legislatures.

Meetings of Congress

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. — The Houses separately

Organization

Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Rules

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journal

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy, and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. — Privileges and Disabilities of Members

Pay and Privileges of Members

The senators and representatives shall receive a compensation[1] for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

[1] Seventy-five hundred dollars a year and twenty cents for every mile of travel each way from their homes at each annual session. There is also an allowance of one hundred and twenty-five dollars for stationery and newspapers. See also "School Civics," p. 113, or "Actual Government," p. 217.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Prohibitions on Members

Section 7. — Method of passing Laws

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Revenue Bills

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

How Bills become Laws

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Resolutions, etc.

Section 8. — Powers granted to Congress

The Congress shall have power:

Powers of Congress

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal,[1] and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively

[1] Letters granted by the government to private citizens in time of war, authorizing them, under certain conditions, to capture the ships of the enemy.

the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States,[1] and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; — And

Implied Powers

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. — Powers forbidden to the United States

Absolute Prohibitions on Congress

The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.[2]

The privilege of the writ of habeas corpus[3] shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder[4] or ex-post-facto law[5] shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[1] The District of Columbia.

[2] This refers to the foreign slave trade. "Persons" means "slaves." In 1808 Congress prohibited the importation of slaves. This clause is, of course, no longer in force.

[3] An official document requiring an accused person who is in prison awaiting trial to be brought into court to inquire whether he may be legally held.

[4] A special legislative act by which a person may be condemned to death or to outlawry or banishment without the opportunity of defending himself which he would have in a court of law.

[5] A law relating to the punishment of acts committed before the law was passed.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. — Powers forbidden to the States

Absolute Prohibitions on the States

No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex-post-facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Conditional Prohibitions on the States

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships-of-war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

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ARTICLE II. — EXECUTIVE DEPARTMENT

Section 1. — President and Vice-President

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Term

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Electors

[[1] The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the

Proceedings of Electors and of Congress

[1] This paragraph in brackets has been superseded by the Twelfth Amendment.

choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

Time of choosing Electors

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.[1]

Qualifications of President

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years resident within the United States.

Vacancy

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly until the disability be removed, or a President shall be elected.

Salary

The President shall, at stated times, receive for his services a compensation[2] which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Oath

Before he enter on the execution of his office, he shall take the following oath or affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

[1] The electors are chosen on the Tuesday next after the first Monday in November, preceding the expiration of a presidential term. They vote (by Act of Congress of Feb. 3, 1887) on the second Monday in January following for President and Vice-President. The votes are counted, and declared in Congress on the second Wednesday of the following February.

[2] The President now receives $75,000 a year, with an allowance of $25,000 for expenses; the Vice-President receives a salary of $12,000 per year. See also "School Civics," p. 183, or "Actual Government," p. 290.

Section 2.—Powers of the President

The President shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Military Powers

Reprieves and Pardons

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Treaties

Appointments

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Fill Vacancies

Section 3.—Duties of the President

He shall from time to time give to the Congress information[1] of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement

Message

[1] The President gives this information by sending a message to Congress at the opening of each session. Washington and John Adams read their messages in person to Congress. Jefferson, however, sent a written message to Congress by his private secretary, and this custom has since been followed.

between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Convene Congress

Section 4. — Impeachment

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Removal of Officers

Article III. — Judicial Department

Section 1. — United States Courts

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation[1] which shall not be diminished during their continuance in office.

Courts established

Judges

Section 2. — Jurisdiction of United States Courts

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers, and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between a State and citizens of another State;[2] — between citizens of different

Federal Courts in General

[1] The chief justice of the Supreme Court receives an annual salary of thirteen thousand dollars, while the associates receive twelve thousand five hundred each.

[2] But compare the Eleventh Amendment.

States; — between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Supreme Court

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Trials

Section 3. — Treason

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Treason defined

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Punishment

ARTICLE IV. — RELATIONS OF THE STATES TO EACH OTHER

Section 1. — Official Acts

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. — Privileges of Citizens

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Fugitives from Justice

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Fugitive Slaves

No person[1] held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. — New States and Territories

Admission of States

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

Territory and Property of United States

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. — Protection of the States

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

[1] "Person" here includes slave. This was the basis of the Fugitive Slave Law. It is now superseded by the Thirteenth Amendment.

ARTICLE V. — AMENDMENTS

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

How proposed

How ratified

ARTICLE VI. — GENERAL PROVISIONS

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

Public Debt

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Supremacy of Constitution

The senators and representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Official Oath

Religious Test

ARTICLE VII. — RATIFICATION OF THE CONSTITUTION

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth.

In witness whereof, we have hereunto subscribed our names.[1]

GEORGE WASHINGTON,
President, and Deputy from Virginia.

NEW HAMPSHIRE
John Langdon
Nicholas Gilman

MASSACHUSETTS
Nathaniel Gorham
Rufus King

CONNECTICUT
William Samuel Johnson
Roger Sherman

NEW YORK
Alexander Hamilton

NEW JERSEY
William Livingston
David Brearley
William Paterson
Jonathan Dayton

PENNSYLVANIA
Benjamin Franklin
Thomas Mifflin
Robert Morris
George Clymer
Thomas Fitzsimons
Jared Ingersoll
James Wilson
Gouverneur Morris

DELAWARE
George Read
Gunning Bedford, Jr.
John Dickinson
Richard Bassett
Jacob Broom

MARYLAND
James M'Henry
Daniel of St. Thomas Jenifer
Daniel Carroll

VIRGINIA
John Blair
James Madison, Jr.

NORTH CAROLINA
William Blount
Richard Dobbs Spaight
Hugh Williamson

SOUTH CAROLINA
John Rutledge
Charles C. Pinckney
Charles Pinckney
Pierce Butler

GEORGIA
William Few
Abraham Baldwin

Attest: WILLIAM JACKSON, *Secretary.*

[1] There were sixty-five delegates chosen to the convention: ten did not attend; sixteen declined or failed to sign; thirty-nine signed. Rhode Island sent no delegates.

†

AMENDMENTS

ARTICLE I.[1] — Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Religion, Speech, Press, Assembly, Petition

ARTICLE II. — A well-regulated militia being necessary to the security of a free State the right of the people to keep and bear arms shall not be infringed.

Militia

ARTICLE III. — No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war but in a manner to be prescribed by law.

Soldiers

ARTICLE IV. — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Unreasonable Searches

ARTICLE V. — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war and public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Criminal Prosecutions

ARTICLE VI. — In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury

[1] These amendments were proposed by Congress and ratified by the Legislatures of the several States, pursuant to the fifth article of the Constitution. The first ten were offered in 1789 and adopted before the close of 1791. They were for the most part the work of Madison. They are frequently called the Bill of Rights, as their purpose is to guard more efficiently the rights of the people and of the states.

of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Suits at Common Law

ARTICLE VII. — In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States than according to the rules of common law.

Bail, Punishments

ARTICLE VIII. — Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Reserved Rights and Powers

ARTICLE IX. — The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X. — The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Judicial Power granted

ARTICLE XI.[1] — The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against any of the United States by citizens of another State, or by citizens or subjects of any foreign state.

ARTICLE XII.[2] — The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate; —

[1] Proposed in 1794; adopted in 1798.
[2] Adopted in 1804.

the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; — the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Method of electing President and Vice-President

ARTICLE XIII.[1] — *Section 1.* Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Slavery abolished

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.[2] — *Section 1.* All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

[1] Adopted in 1865.
[2] Adopted in 1868.

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Negroes made Citizens

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive or judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a senator or representative in Congress, or elector of President or Vice-President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Negroes made Voters

ARTICLE XV.[1] — *Section 1.* The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI.[2] — The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE XVII.[2] — The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

NOTE. The above amendment is in lieu of the first paragraph of section three of Article I of the Constitution of the United States, and in lieu of so much of the second paragraph of the same section as relates to the filling of vacancies.

[1] Adopted in 1870. [2] Adopted in 1913.

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